The Solicitors' Journal

Vol. 96 December 20, 1952 No. 51

REMUNERATION : NEW PROGRESS

THE PRESIDENT of The Law Society had some concrete progress in the remuneration negotiations to report at the Special General Meeting of members held on 28th November last, the proceedings at which have now been made public by publication of the minutes in the *Law Society's Gazette* for December. Much, though not all, that was asked for in respect of non-contentious business appears likely to be conceded, and if all goes well there is a prospect that a new remuneration order will come into being within two or three months.

The LORD CHANCELLOR has intimated that he is prepared to agree to the making of orders which, while their precise provisions have not been disclosed, will have *inter alia* the following general effects: (1) As respects transactions of over £10,000 involving unregistered land, the Sched. I scale charge of a vendor's, purchaser's, mortgagor's or mortgagee's solicitor for deducing or investigating title to be 10s. per cent. on the excess over £10,000 without limit. (2) The abolition of the detailed charges laid down in Sched. II, and the substitution of a completely new method of charging in the form of a lump sum calculated as being fair and reasonable having regard to all the circumstances, and, in particular, difficulty or complexity, amount or value of property involved, importance of the matter, skill and responsibility required of the solicitor, number and importance of documents concerned, place and circumstances of the business transacted and time expended on it. (3) The removal of the £100,000 ceiling on, and an increase throughout the scale in, the Sched. I scale charges of a mortgagee's or mortgagor's solicitor for negotiating a loan. (4) As respects registered land, an increase in the scale and removal of the £100,000 ceiling.

Draft orders to this effect are now under consideration by the Council of The Law Society, and the substantive orders when made are subject to negative resolution by either House of Parliament. Since the Chancellor of the Exchequer has, it appears, already given his blessing to the proposals, a negative resolution may, perhaps, be regarded as unlikely, and it may not therefore be premature to congratulate the Council on the success which their persistent efforts have at last commanded.

So far, however, little progress has been made in securing adequate remuneration for contentious work. In the High Court, the Supreme Court Rule Committee seem unwilling to consider the revision of Appendix N pending the report of the Evershed Committee, and as respects criminal proceedings the joint representations by The Law Society and the General Council of the Bar urging

CONTENTS

implementation of s. 21 of the Legal Aid and Advice Act, 1949, have as yet borne no fruit. So far as civil litigation in the High Court is concerned, the President made it clear that the mere passive awaiting of the Evershed Report could not be countenanced, and in this he was supported by the passing of a resolution urging that steps be taken at once to press for an immediate increase. A letter published elsewhere in this issue exhorts the rank and file of the profession to make their voices heard on this question, and we need hardly add that so far as space permits our columns are open to readers for this purpose. If, as has more than once been said, contentious business is being subsidised by receipts from non-contentious work, the position becomes all the more anomalous with the prospective improvements in the scale for the latter, and there is every justification to press for at least an interim alleviation in the High Court scale.

CURRENT TOPICS

Charitable Trusts

As we go to press the report of the Nathan Committee on Charitable Trusts (Cmd. 8710, 6s. 6d.) has just been published, and on 16th December the PRIME MINISTER and the LORD CHANCELLOR simultaneously announced in both Houses that legislation would be introduced as soon as possible to deal with one aspect of the report, namely, the validation of imperfect trust dispositions which authorise the application of property for both charitable and non-charitable purposes. The purport of the proposed legislation is summarised in a statement printed in Hansard (H.C.), 16th December, cols. 154–155, and (H.L.), 16th December, cols. 996–998. Broadly, the proposed Bill will seek to validate (for charitable purposes only) such dispositions, if made before 16th December, 1952, if they have been treated as valid but are in fact invalid on grounds which would not have that effect if the objects were wholly charitable. The attention of solicitors is particularly drawn to paras. 6 and 7 of the statement, relating to protection for persons applying property in accordance with the terms of such a disposition in the period between 16th December and the passing of the Bill. Rights to recover property on the ground of invalidity of the disposition will generally be extinguished unless at 16th December the disposition has been in operation for less than six years.

Rent Restriction and Repairs

FULL consideration is to be given, the LORD CHANCELLOR said in the Lords' debate on 10th December on rent restrictions, to all the suggestions made. The idea which had found favour on both sides of the House, he said, was that any increase in rent in favour of the landlord must be tied up with an obligation to repair, although there were, in the slums of our great cities, some properties upon which it would be a pity to expend money and materials. It will be remembered that, in a report published last year, the Royal Institution of Chartered Surveyors made proposals for short-term amendment of the Rent Restrictions Acts which would allow increases in controlled rents to cover the increased costs of repairs. In their report, the Institution published a detailed analysis of repair costs which showed that, in March, 1951, costs were 275 per cent. of the pre-war (1939) figures. The Institution has recently made a further analysis which shows that, in November, 1952, repair costs had risen to 293 per cent. of the 1939 figures. The Institution suggested that an increased rent could be calculated to cover subsequent increases by adding to the existing rent a specified percentage of the statutory allowances from gross annual value for rating purposes.

New Bankruptcy Rules and Amended Rules of Court

A NEW consolidation of the Bankruptcy Rules, 1915, and all subsequent rules made under the Bankruptcy Act, 1914, becomes operative on 1st January, 1953, from which date the previous rules cease to have effect. The new rules, known as the Bankruptcy Rules, 1952 (S.I. 1952 No. 2113 (L. 14)—H.M.S.O., 5s. net), make a certain number of minor amendments affecting, *inter alia*, service of documents in county court proceedings; address for service in High Court proceedings; time allowed for sending copy notice of appeal to court appealed from; payment of deposit on petition in a county court; power of trustee to apply to court where committee of inspection authorises employment of solicitor without fixing a limit for his costs; and power for official receivers to make allowances out of estates for the support of families of deceased debtors. Also on 1st January next there will come into operation the Bankruptcy Fees Order, 1952 (S.I. 1952 No. 2114 (L. 15)), which consolidates the similarly named order of 1930 and its amending orders. Between them these two new instruments replace a large number of previous rules and orders and effect a welcome tidying up and simplification. Another statutory instrument which requires mention here is the R.S.C. (No. 2), 1952 (S.I. 1952 No. 2122 (L. 17)). This makes a number of small amendments to the Rules of the Supreme Court and became operative on 15th December, 1952. Provisions affected are Ord. 22, rr. 2 and 4; Ord. 54, rr. 4F and 12; Ord. 63, r. 9; and Ord. 65, rr. 19C and 19D.

Continuance of Emergency Legislation and Revocation of Defence Regulations

As foreshadowed at p. 735, *ante*, orders have now been made continuing certain emergency provisions which were there detailed and which would otherwise have expired on 10th December last. The orders are the Emergency Laws (Continuance) Order, 1952 (S.I. 1952 No. 2095), and the Supplies and Services (Continuance) Order, 1952 (S.I. 1952 No. 2094). The necessary orders have also been made to revoke such of the existing regulations as were not deemed to require a further period of life. By the Defence Regulations (No. 2) Order, 1952 (S.I. 1952 No. 2091), a large number of the Defence (General) Regulations, 1939, are revoked as from 7th December, 1952. The most important from the point of view of practitioners are reg. 54A (power to permit nuisances where necessary), reg. 68CA (restriction on conversion of housing accommodation to use for non-residential purposes) and reg. 78 (supplementary provisions as to control of undertakings). It is thought that the necessity for planning permission being obtained for change of user from residential to non-residential purposes made reg. 68CA superfluous. Among other regulations which are affected are reg. 62, paras. (1), (1A), (2A), (3), (4B) and 5, which are revoked (provisions with respect to the control of cultivation and the termination of agricultural tenancies), and reg. 68CB. The latter regulation makes provision for facilitating lettings of parts of dwellings and is revoked except in relation to accommodation registered thereunder immediately before the

date of the coming into operation of the order and accommodation in respect of which an application for the registration thereof under that regulation has been made before that date. The Defence Regulations (No. 3) Order, 1952 (S.I. 1952 No. 2093), which also came into operation on 7th December, effects a number of revocations of parts of the Defence (General) Regulations, 1939, dealing with criminal matters. In para. (1) of reg. 90 of the Defence (General) Regulations, 1939 (which penalises a person who attempts to commit, conspires with another to commit or does any act preparatory to the commission of an offence against any of those regulations), the words " or does any act preparatory to the commission of " are revoked. It also effects minor amendments of the Defence (Patents, Trade Marks, etc.) Regulations, 1941.

Legal Aid and Security for Costs

IN *Evans* v. *Evans*, on 12th December (*The Times*, 13th December), the Court of Appeal (SINGLETON and MORRIS, L.JJ.) allowed an appeal from a decision of COLLINGWOOD, J., affirming a registrar's order, ordering a husband petitioner to pay £20 into court as security for costs in divorce proceedings in which both parties were legally aided. The National Assistance Board had assessed the husband's maximum contribution at £70, which amount he had been ordered to pay towards his own costs. Singleton, L.J., agreed with the judgment of BARNARD, J., in *Vincent* v. *Vincent* ([1952] 2 T.L.R. 907) in which he upheld the power to make an order for security for costs even though the person against whom it was to be made was an assisted person. He did not however see that an application like the present one served any good purpose when there was no reason to suppose that the petitioner had any means other than those found by the National Assistance Board. All that the registrar had before him was the civil aid certificate, and he did not think that it was right for the registrar to say that the husband should give security for £20.

Negligence and Zebra Crossings

PROFESSOR Sir ARTHUR L. GOODHART, Q.C., discussed an interesting aspect of the law of negligence in relation to the Pedestrian Crossings (London) Regulations, 1951, in a letter to *The Times* of 8th December. He referred to the law of statutory negligence and absolute statutory duties, as well as *Upson* v. *L.P.T.B.* [1947] K.B. 930; *Chisholm* v. *L.P.T.B.* [1939] 1 K.B. 426; and *Bailey* v. *Geddes* [1938] 1 K.B. 156, in which, he argued, it was held that the regulations had the force of a statute in determining the civil rights of the plaintiff. Sir Arthur quoted Lord Wright's statement in *Lochgelly Iron and Coal Company* v. *McMullan* [1934] A.C. 27 that there is no need to prove negligence as an issue for the jury, because the statute itself is conclusive evidence of negligence, unless it contains in itself some qualification. As to the general efficacy of the crossings, it is interesting to see from a written Parliamentary reply on 8th December that " they have almost certainly reduced pedestrian accidents." In the first nine months of this year pedestrian casualties were about 3,000 fewer than in the corresponding period of 1951, a decrease of 7¼ per cent.

Women as Solicitors

THE successes of women in the solicitors' profession have been recorded in this journal from time to time, and most recently with reference to a dinner of the 1919 Club, all of whose members are women lawyers (*ante*, p. 701). Since women were first admitted to the rolls experience has shown that the calling of solicitor is one which offers special opportunities to women, of which they have fully availed themselves. They have not only built up successful practices, but have succeeded in obtaining important posts in the local government service and elsewhere. As managing clerks they have retained the confidence and respect of their employers, their colleagues and their clients. The London and National Society for Women's Service states in its annual report, which it has just published, that " while there is reasonably fair treatment of women both in regard to opportunities and pay in a few professions, prejudices and difficulties exist pretty generally, and seem to be greater in the provinces than in London. It is apparent that in some professions, particularly teaching, conditions for women are becoming seriously worse." There is little or no prejudice against the employment of women in the solicitors' profession, and, so far as we know, there never has been any adverse opinion on the subject.

TOWN AND COUNTRY PLANNING: FINANCIAL PROVISIONS—IV

CLAUSE 3 (savings and special provisions) of the new Bill contains five sub-clauses.

The first sub-clause is designed to retain the present position with regard to compensation under ss. 22 (1) and 51 (4) of the 1947 Act.

Section 22 of the 1947 Act is that which provides for the payment of compensation by a local planning authority when they revoke a planning permission already granted but not yet acted upon. Compensation is payable for abortive expenditure or for loss or damage directly attributable to the revocation, but is not to include any element for depreciation in the value of the land caused by the revocation except where under the 1947 Act the owner is the owner of the development value in the land. He may be the owner of this value either because he has bought it back from the State by paying a development charge for the planning permission which is revoked, or because it was never taken away from him by the 1947 Act owing to some provision in Pt. VIII of the Act, e.g., the provision in s. 80 relating to ripe land by virtue of which no charge was payable.

Because development charge is being abolished, the development value will now reside in the owner of the land in all cases and not only in cases where a charge has been paid or there is an exemption from charge under Pt. VIII. However, the first sub-clause provides that no additional liability for compensation is as a result to be placed on the authority, so that an owner must look to the compensation to be provided by the further Act referred to in cl. 2 of the Bill, and not to the authority, if his land is depreciated in value by a revocation order, unless (and this still applies) his land is ripe under s. 80 or would for some other reason be exempt from charge under Pt. VIII of the 1947 Act if charge were still payable.

Section 51 of the 1947 Act is that which restricts the compensation payable on the compulsory acquisition of land after 1st July, 1948, to the existing use value except where the owner has planning permission to carry out development

and the development value rests with the owner because he has bought it back by paying development charge or because by virtue of some provision in Pt. VIII he is exempt from charge.

By virtue of the abolition of development charge the development value in every case resides with the landowner; nevertheless the new Bill by cl. 3 (1) prevents him from recovering it from the acquiring authority on a compulsory acquisition except in two cases, namely—

(1) where development charge has been paid in respect of development commenced before 18th November, 1952 (but not where the charge has been paid and the development has not then been commenced because in this case the developer is entitled to repayment of the charge under cl. 1 (5) of the Bill); or

(2) where the case would fall within some provision in Pt. VIII exempting it from payment of charge if charge were still payable.

This is a particularly important provision because it means that except in Pt. VIII cases an owner will still only receive existing use value from the acquiring authority and must look to the new compensation arrangements for anything more, which he will not receive until 1954, and, as already pointed out, if there is no admitted claim on the £300m. fund, he will never receive any more. Incidentally, where development value can be claimed from an acquiring authority in a Pt. VIII case there is nothing to limit it to the 1947 values.

It appears from para. 33 of the White Paper that in the further Act to be passed later some special provisions will be made in connection with Pt. VIII cases.

It is, therefore, still relevant to ascertain whether land being purchased is dead ripe or otherwise within Pt. VIII of the 1947 Act.

Clause 3 (2) of the new Bill contains the provisions which take away the Central Land Board's powers to acquire land whether by agreement or compulsorily. The only saving is for cases where the agreement was entered into or the notice to treat served before the 18th November, 1952.

The provisions contained in sub-cll. (1) and (2) of cl. 3 lead naturally to an examination of the Government's policy for compulsory purchase so far as this can be elucidated from the White Paper and the Second Reading Debate on the Bill in the House of Commons.

First, it must not be thought that the removal of the Central Land Board's powers heralds a great decrease in the number of cases of compulsory acquisition. These powers have never proved particularly effective, and only twenty-six compulsory purchase orders were made by the Board in four years. This may have been due partly to the legal difficulties caused by the protracted proceedings in the *Fitzwilliam* case, mentioned in the third part of this article, partly to the fact that a central authority is not very well adapted to making compulsory purchases in many different parts of the country, and partly to other causes.

It seems clear that the Government are removing the Board's powers, not because they think that powers of compulsory purchase are unnecessary to promote the sale of land for development in the right place at a reasonable cost, but because the Board's powers were not effective. It is through the local authorities that the Government intend to work.

These authorities already have extremely wide powers, both under the Housing Acts and the Act of 1947, to acquire land compulsorily for the purpose of promoting development either by themselves or by disposing of the land for development by private enterprise. The disposal of the freehold by local authorities for private development has only comparatively recently been facilitated by s. 18 of the Town Development Act, 1952.

The Board only made twenty-six orders in four years; local authorities have been much more active already. In the words of Mr. Marples, Parliamentary Secretary to the Ministry of Housing and Local Government, in the Second Reading Debate (Hansard, vol. 508, No. 20, col. 1240): "We made inquiries a few months ago and we found that 200 to 300 local authorities were using or thinking of using their compulsory purchase powers under the Housing Acts to make land available for development after servicing. The local authorities have indicated that they intend to use the compulsory purchase orders."

Mr. Marples also said (cols. 1236 and 1237): "The hon. member for Widnes asked whether compulsory purchase orders would operate under the Housing Acts or under the planning powers, and the answer is that it will be both. The planning authority has wider powers, and, if I may summarise them, they can acquire land for promoting and developing, and, in a great many cases recently, they have both acquired land and disposed of it. My right hon. friend intends to look closely into this matter when he meets the local authority associations shortly, and to strengthen and simplify, if necessary, the present compulsory purchase order powers. He will, if necessary, widen or strengthen them, according to whatever is wanted."

The present tendency is for development plans to restrict the amount of land available for development owing to the desirability of conserving agricultural land, maintaining green belts round towns, and so forth. Where land for development is thus in short supply the tendency will be for its price to rise. But, if a town is to develop according to plan—

(1) the land that is shown for development must be brought into the market and not simply remain in its present state because the owner does not wish to sell at all; and

(2) this land must change hands at a reasonable, not an extortionate, price.

It seems likely, therefore, that in future there will be an increase in the amount of land purchased compulsorily, or by agreement under the threat of compulsory powers, and this brings up for consideration the second aspect of the Government's policy, which is that the compensation payable on compulsory purchase should be the current existing use value of the property plus the 1947 development value (White Paper, para. 30), by which is meant the admitted amount of the claim on the old £300m. fund. This policy is achieved by allowing s. 51 of the 1947 Act and, in particular, as mentioned above, subs. (4) of that section, to continue to operate as if no change were to be made by the Bill, thus leaving the acquiring authority to pay the current existing use value and the owner to claim in due course his compensation payment from the Exchequer. In the exceptional Pt. VIII cases the authority will have to pay the market value for the land as heretofore.

This review of the Government's policy for compulsory purchase emphasises the importance to a prospective purchaser of undeveloped or under-developed land of securing, wherever possible, not only planning permission for his development before contracting to purchase, but also the assignment of the claim on the £300m. fund or satisfactory evidence that the land is a Pt. VIII case. If the land is not within Pt. VIII, an appropriate warning of the risk he runs should be given to a prospective purchaser who intends paying more than he would receive on a compulsory purchase.

To return to the various sub-clauses in cl. 3 of the new Bill, sub-cll. (3), (4) and (5) are concerned with various provisions relating to mines and minerals. Sub-clause (3) provides that the new Bill shall not affect the working of the Mineral Development Charge Set-Off Regulations, 1951; sub-cl. (4) revokes reg. 6 of the Town and Country Planning (Modification of Mines Act) Regulations, 1948; and sub-cl. (5) suspends the operation of s. 30 of the Mineral Workings Act, 1951, until Parliament otherwise determines.

In conclusion, it is perhaps interesting to consider the Government's answers to two points of criticism of their proposals made by Sir Malcolm Trustram Eve (see 96 SOL. J. 789).

The first point is that the rule, no claim—no compensation, may work unfairly. As pointed out in the first part of this article, the purchasers of two adjoining fields, one with a claim and one without, who are refused planning permission because the land is in a green belt, will receive totally different treatment as a result of this rule. There must be many hundreds of cases, mostly those of small owners who can ill afford financial loss, where no claim was submitted. Mr. Harold Macmillan, the Minister of Housing and Local Government, in the Second Reading Debate, said (Hansard, vol. 508, No. 20, col. 1130): "I should now refer to those who, for some reason or other, had development value in 1947 but omitted or were unable to put forward their claim. It has been suggested that quite a large number of people are in this category. I am bound to say that up to now the Government have received no evidence that this is so. However, since a contrary opinion has been sustained by high authority, I must recognise that there may be a problem, and if it should prove to be the case we shall do our best not to reopen a whole system of claims, which would be quite impracticable, but to make some provision in the main Bills to meet this difficulty." Here at least is hope.

The second criticism is that the adoption of the 1947 development value as a ceiling is an artificial expedient doomed to failure as in the case of past artificial ceilings, e.g., the "March, 1939, ceiling." The Government's answer to this is that their ceiling applies only to development value and does not affect the existing use value, whereas previous ceilings affected the total value. Thus a man who is dispossessed of his house or his office by compulsory purchase will, under the new arrangement, receive the current market value of the premises as a house or an office and will thus have the means to pay for alternative premises of the same kind, whereas, for example, under the 1939 ceiling, he would receive less than the current market value and might then be unable to acquire other premises, or, if he could, would suffer loss in so doing.

However this may be, it seems inevitable that, in practice, as mentioned in the first part of this article, development values will not become stabilised at 1947 values. The result will be that when the gap between the current market value and the 1947 value becomes sufficiently wide, public opinion will demand an upward revision of the ceiling. The only method of achieving stabilisation at 1947 values is the exercise of compulsory powers of purchase on such a wide scale that no one dare purchase land at a greater price than that which would be receivable on a compulsory purchase, but this method is unlikely to be used.

R. N. D. H.

THE DEFAMATION ACT, 1952—II

SECTIONS 5 AND 6

SECTIONS 5 and 6 of the Act deal with those actions for libel and slander where the defence depends, in some way, on the truth of the matters alleged. That issue may arise in two different ways. Either the alleged defamation may consist of statements of fact which, the defence pleads, are true, or it may consist of expressions of opinion which, say the defence, are fair comment on true facts. Or indeed, as quite often happens, expressions of opinion and matters of fact may be inextricably involved with each other. In any event, the onus of proving the truth of facts relied on rests upon the defendant.

Here, however, a problem often arises: the facts may be largely but not wholly true. Defendants of graver years are often like Huckleberry Finn: "There was things which he stretched, but mainly he told the truth." In that case, other things being equal, the judge was obliged to direct the jury to award damages to the plaintiff. These might, indeed, be only nominal; but the question of costs, if not of honour, arose. And, meanwhile, many impudent scamps who had been properly chastised recovered quite large sums from persons who had performed that public service.

The following sections seek to amend this position. The decision is left to the jury; but in such a way that a merely technical defamation which is devoid of actual sting shall not entitle the underserving litigant to recover even nominal damages.

JUSTIFICATION (SECTION 5)

It has long been a defence to an action for defamation to prove the truth of the words which are said to be defamatory, that is, to plead justification. Before the present Act, however, a plea of justification could succeed only where each and every allegation was justified. If among a variety of charges one minor issue alone was left unproved, the plea was bound to fail in respect of that charge and a verdict would be entered and damages awarded against the defendant. For example, where ten instances were cited of the fraudulent conduct of an employment agency and only nine of those instances were substantiated, the defence of justification failed.

When the detailed exposure of wrongdoing was undertaken, as in the case cited, the inability to prove every single charge may have arisen for other reasons than carelessness. It is clear that the law, as it stood, was calculated to inhibit a good deal of public exposure of rogues and to leave open to them great possibilities of extortion when such a task was undertaken. Section 5 provides that in an action for libel or slander containing two or more distinct charges, the plea of justification shall not fail only because the truth of every charge is not proved.

At the same time it would clearly be unjust that misconduct of one kind should expose the wrongdoer without redress to public censure for other misdeeds of which he is not, in fact, guilty. The section therefore imposes the additional requirement that, for the defence of justification to succeed, the words not justified shall not, having regard to the truth of the remaining charges, materially injure the plaintiff's reputation.

Much uncertainty will perhaps be occasioned by the term "materially." Whether material injury has been done will, of course, be a matter of fact for the jury to decide.

It is hardly possible to lay down a general rule that the charge or charges not proved must bear some defined relation to those which are; but certainly in many cases a close connection is likely to be found. Where, for instance, seven

out of eight charges of being drunk and disorderly are justified, a jury might well hesitate to conclude that an eighth charge of the same character could materially injure the reputation of the plaintiff further. They would, no doubt, as reasonable men, take a different view were the eighth and unproven charge one of theft.

It is safe to suppose that the courts will protect persons, admittedly guilty of misconduct, from any attempted misuse of the section to protect defendants from liability in respect of additional false charges gratuitously and recklessly made. Indeed, an attempted misuse of the section would be likely to result, not in the avoidance of liability to pay damages, but in their substantial aggravation.

Fair Comment (Section 6)

It is a defence in an action for libel or slander that the words complained of were fair comment upon a matter of public interest. This defence is only available in respect of expressions of opinion and, when it is applicable, imposes a far lighter burden upon the defendant in respect of the defamatory words than a defence of truth or justification. It is, however, very seldom that defamatory matter consists solely of expression of opinion. Usually, the matter complained of consists partly of statement of fact and partly of expression of opinion, i.e., comment upon those facts, or upon those facts and other facts, not necessarily expressed or referred to in the subject-matter complained of.

The general rule applicable to this defence is that, in order to be "fair comment," the comment must be based upon true facts. No one would question this salutary general principle. It often happened, however, that the defendant, though he could provide a substantial basis of fact on which to rest the opinions expressed, could not prove the truth of each and every allegation of fact offered in the publication. In that event, however, though the allegation of fact not proved was a relatively trivial matter, while those which were proved fully justified the opinion expressed, the defence of "fair comment" often failed. In the recent case of *Kemsley* v. *Foot* [1951] 2 K.B. 34; [1952] A.C. 345, it was held that where the defendant based his comment upon facts not expressed in the subject-matter complained of, and gave particulars in his pleading of the facts upon which the comment was based, it was not necessary, in order that the defence should succeed, for every one of the facts alleged to be proved. If the jury found certain of the facts proved, and considered that the opinions expressed were "fair comment" upon those facts, the defence would not fail merely because the defendants had not proved many other facts set out in their pleading as a basis of their comment.

Section 6 brings the law, in cases where the facts upon which the opinion is based are set out in the subject-matter complained of, into line with the principle laid down in *Kemsley* v. *Foot* in those cases where the facts relied upon first appear in the particulars of defence. If the defendant in an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion proves facts which support his expression of opinion as "fair comment," he will succeed in that defence, although he has failed to prove other allegations contained in the same statement. Thus, in the future, it will make no difference whether the facts upon which comment is based are contained in the offending subject-matter or elsewhere: the only question will be whether the comment is "fair comment" on the facts found proved at the trial. Fears were expressed that the provisions of this section could be misused so as to encourage reckless misstatement of fact, but juries' power to have regard to these unproven allegations in assessing the defendant's good faith should prove an ample safeguard. Moreover, if the allegations of fact which the defendant has failed to prove are in themselves defamatory, then they are in themselves actionable. However, in such a case s. 5 might well apply.

Harold Lever

A Conveyancer's Diary

LEASE BY MORTGAGOR: POSITION OF MORTGAGEE WHO STANDS BY

Building societies and other mortgagees will welcome the decision in *Parker* v. *Braithwaite* [1952] 2 T.L.R. 731. The plaintiffs were the trustees of a building society to which the first defendant had mortgaged a house in 1949. The mortgage was by demise, and its provisions were those which are usually found in mortgages of this kind: in particular, the mortgagor's statutory power of leasing was expressed to be exercisable only with the consent in writing of the mortgagee. The mortgage contained an attornment clause, but nothing appears to have turned on this clause. In 1950 the first defendant let part of the house to the second defendant, himself continuing to occupy the remainder of the premises, but in May, 1951, he vacated the whole of the premises and let them to the second defendant. Just before doing so, he appointed one *L*, who was the local agent of the building society, to be his agent and to collect the rents and profits of the premises on his behalf, and out of such rents and profits to keep down the mortgage payments due to the society, and other outgoings, and to account for the balance (if any) to him, the first defendant. After the first defendant had vacated the whole of the premises in favour of the second defendant, *L* began to collect the rent which the second defendant had agreed to pay to the first defendant, and he informed the district manager of his agreement to collect the rent of the premises and of the tenancy which had thus been created between the two defendants. The society took no steps to recover possession of the premises for some six months after this, and when eventually a summons for possession was taken out it was opposed by the second defendant on the ground that the society must be treated as either having consented to the letting, or as having recognised it *ex post facto*, and in either event as having no right to possession.

Danckwerts, J., refused to accede to either of these arguments. As regards the first, that based on a consent by inference, this decision rests very much on its own facts, but apart from the grounds upon which the learned judge based this part of his decision it seems to be very difficult to see how a provision making consent in writing necessary to the effective exercise of a mortgagor's statutory power of leasing can be said to be satisfied by a consent to be inferred from the conduct of the parties not amounting to writing.

The other argument was more formidable. The facts in relation to this part of the case, as found by the court, were as follows: the rents had been collected, during the period of six

months relied upon by the second defendant, by *L*, but he had collected these rents not as the agent of the building society, but as the agent of the first defendant, the mortgagor, and no permission had at any time been given by the society to *L* to represent to the second defendant that her landlord, the first defendant, had permission to create a tenancy in her favour. The society had, in fact, refrained from ejecting the second defendant from the premises for some six months, and had perhaps received the benefit of some of the payments made by her during this period in that the mortgage instalments had been met therefrom, but beyond that the society had not been in any way concerned with the collection of the rents from the second defendant.

These being the facts, the second defendant argued that the society had disentitled itself to possession, and relied for this argument on several observations in reported cases as supporting this view. The most apposite of these was a passage from the judgment of Farwell, J., in *Iron Trades Employers' Insurance Association, Ltd.* v. *Union Land and House Investors, Ltd.* [1937] Ch. 313, a case in which a mortgagor had covenanted not to lease the property without the consent of his mortgagee, and the validity of a lease granted by him admittedly without such consent was examined, first, in relation to the mortgagor's statutory power of leasing, and then in relation to the right which every owner or occupier of property has to let the property to a third party quite apart from any power in that regard conferred upon him by the mortgage deed or by statute. This famous decision was the progenitor of that in *Dudley & District Building Society* v. *Emerson* [1949] Ch. 707, where it was held that a tenancy created by a mortgagor in favour of a third party after the mortgage and without the mortgagee's consent, where that is made necessary, cannot found a protected tenancy for the purposes of the Rent Restrictions Acts even if all the other circumstances of the letting are such as would normally bring those Acts into operation. In the course of his judgment, Farwell, J., after saying that the mortgagee was at liberty, as soon as he heard of the unauthorised letting, to treat the tenant as a trespasser and obtain possession of the property, went on to say that the mortgagee in such circumstances might equally well confirm the letting, but that " if, knowing the facts, he stayed his hand and did nothing, he might find himself in danger of being held to have acquiesced in and thereby confirmed the lease and, therefore, not entitled to oust the tenant." There were passages from the reports of earlier cases in the same sense as this, but in none of them was there any indication how long a mortgagee must be shown to have been aware of the tenancy before he could be said to have lost his normal right to possession.

On the other hand, in the more recent case of *Bradford Permanent Building Society* v. *Cholmondeley*, which was decided on the 26th May, 1952, and of which a note appears in the September issue of " Current Law " (at p. 121), a building society mortgagee stood by for a matter of a year or more in circumstances very similar to those in the present case, but Harman, J., nevertheless made an order for possession, relying for his decision on an Irish case, *Re O'Rourke's Estate* (1889), 23 L.R. Ir. 497, in which Monroe, J., had said that he could not infer the creation of a tenancy between the mortgagee and a third party merely because the mortgagee took no active steps to disavow a tenancy created by the mortgagor. " The mortgagor, while in possession, and bound to keep down the interest on his mortgage, is at liberty to manage the land as he pleases. It is not for the mortgagee to interfere with that management unless he chose to go into possession. He treats the tenancy as one binding on the mortgagor, but in no way binding upon himself if he find it afterwards for his interest to repudiate it."

Danckwerts, J., followed these last two cases in preference to the observations (which were clearly *obiter*) in the *Iron Trades* case referred to above, and by so doing made it clear that a mortgagee who receives notice of a tenancy created by his mortgagor without his consent, where that is made necessary, does not deprive himself of his right to possession of the premises merely by delay in taking steps to obtain possession, at any rate if the delay does not exceed a year. In so deciding, the learned judge has removed at least one anxiety from the many which press upon mortgagees, especially building society mortgagees, in these difficult days, for a solution to the problem of drawing a mortgage deed in such terms as to preclude the creation of tenancies which might by some temporary oversight become binding on the mortgagee has long been sought, and until the present case was reported, could not with certainty be said to exist.

The present decision is not, of course, completely unqualified. The learned judge was careful to say that there may be cases where a mortgagee may so conduct himself as to confirm in some way a tenancy which has been created by his mortgagor without consent, where that is made requisite; but mere knowledge of the creation of such a tenancy and its continued existence, at any rate over a reasonably long period, is not to bind the mortgagee to recognise the tenancy. Perhaps, indeed, the length of time during which the mortgagee stands by is in this connection immaterial, and something more than the mere passage of time is required before the mortgagee loses his liberty to repudiate it; something, that is to say, in the nature of an estoppel, such as seems to be indicated in the passage from Monroe, J.'s judgment in *Re O'Rourke's Estates* quoted above, where that learned judge said that he could not infer the existence of a tenancy between the mortgagee and the third party " merely because the mortgagee takes no active steps to disavow the tenancy." If the tenant has in some way worsened his position in reliance on the continuance of the mortgagee's tacit consent to his occupation of the premises, it is not unreasonable that he should be able to maintain that occupation as against the mortgagee; but otherwise there seems to be no reason why any particular favour should be extended to a person who, if personally perhaps without blame, yet derives his title from a breach of contract. The present decision and that in *Cholmondeley's* case may be the beginning of a much needed clarification of the law and its eventual formulation in a manner consonant with the well-established principles on which the doctrine of estoppel rests.

" A B C ".

Mr. F. G. LAWRENCE, Q.C., has been appointed Recorder of the City of Canterbury.

The Honourable Mr. Justice BARNARD has been elected Treasurer of Gray's Inn for the year 1953 in succession to the Honourable Mr. Justice SELLERS, M.C., who has been elected Vice-Treasurer for the same period.

Mr. W. G. THORNTON, assistant solicitor to Middlesbrough Corporation, has been appointed deputy Town Clerk of Wednesbury. He takes up his new appointment on 5th January.

Mr. H. V. LLOYD-JONES, Q.C., has been appointed Recorder of the City of Chester.

Mr. B. G. B. HALL has been elected a Bencher of Lincoln's Inn.

Mr. R. A. L. COWARD, assistant solicitor to Northampton Corporation, has been appointed assistant solicitor to Birmingham Corporation.

Mr. D. F. PEACOCK, solicitor, of Settle, Clerk to Settle Rural Council, has been appointed Craven representative on the Yorkshire County Cricket Committee.

Landlord and Tenant Notebook

CONTROL: POSSESSION ON GROUND OF OVERCROWDING

By s. 9 (1) of the Rent and Mortgage Interest Restrictions Act, 1939, that Act and the Rent and Mortgage Interest Restrictions Acts, 1920 to 1938, may be cited together as the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939. The good work was not carried on by the Furnished Houses (Rent Control) Act, 1946, or by the Landlord and Tenant (Rent Control) Act, 1949, of which the latter, at least, is *in pari materia*. Of course, in practice and in common parlance, we have long ceased to refer to the Acts by what Parliamentary draftsmen are pleased to call a " short title " ; except on formal occasions, the expression " the Rent Restrictions Acts " has long been adequate to express one's meaning ; and, for not so long, the expression " the Rent Acts " has been found sufficient, and is even used as the title of a well-known textbook on the subject.

Breath-saving terseness has its advantages ; but one objection to calling these statutes just " the Rent Acts " may be that it tends to make one forget their essential nature and object. They confer no rights . . .

Possibly consciousness of this characteristic of the legislation would have warranted a different approach to a point raised in a recent county court case, *Makinson* v. *Todd* (heard at Southport) an account of which has been kindly supplied to this journal by those who acted for the plaintiff concerned.

The action was for possession of premises which by reason of their nature and rateable value were premises to which the Acts applied, and the claim, dated 15th July, 1952, alleged, *inter alia*, that the defendant's tenancy had been determined by a notice to quit expiring on 14th July, 1952, and that the premises were overcrowded within the provisions of the Housing Act, 1936, s. 58. The defence, dated 15th September, admitted the notice to quit but proceeded : " The defendant denies that the said premises are overcrowded as alleged . . . The defendant has been granted a licence by the County Borough of Southport local authority under s. 61 of the Housing Act, 1936, authorising him to permit three persons in excess of the permitted number of persons as defined by the said Act to sleep in the said premises."

The provisions of the Housing Act, 1936, relating to overcrowding are as follows. Section 58 defines overcrowding by reference to the number, age and sexes of persons who must sleep in the same room and to calculations of area of accommodation contained in Sched. V. Section 59 makes overcrowding a punishable offence. Section 60 authorises the Minister of Housing to modify the requirements in certain special circumstances. Section 61, the section relied upon in the tenant's pleading, enacts : " (1) Where it appears to the local authority, having regard to the existence of exceptional circumstances, to be expedient so to do, they may, on the application of the occupier or intending occupier of a dwelling-house in their district, grant him a licence authorising him to permit such number of persons in excess of the permitted number as may be specified in the licence to sleep in the house " ; and " (5) The occupier of a dwelling-house shall not be guilty of an offence under s. 59 of this Act by reason of anything done by him under the authority of, and in accordance with, any conditions specified in, a licence in force under this section." Sections 62 to 64 deal with entries in rent books, publishing of information, notifying the authority, etc. ; and by s. 65 (1) : " Where a dwelling-house is overcrowded in such circumstances as to render the occupier thereof guilty of an offence, nothing in the Rent and Mortgage Interest Restrictions Acts, 1920 to 1933, shall prevent the landlord from obtaining possession of the house."

At the hearing, the defence produced an impressive looking Licence for Temporary Use of House by Persons in Excess of the Permitted Number, which cited s. 61 and informed the defendant that the County Borough Council of Southport did thereby authorise him to permit three persons or the equivalent in excess of the permitted number of nine persons to sleep in the premises during the period from 13th September, 1952, to 31st March, 1953. This document was dated 12th September, 1952.

The sequence of events was thus : Notice to quit expired, 14th July ; plaint issued, 15th July ; licence issued, 12th September ; and defence filed, 15th September. It was not disputed that the premises had been overcrowded within the meaning of the Act and its penal provisions when the notice to quit expired, and the plea was that the court had to consider the state of affairs obtaining at the date of the hearing. The defence accordingly cited such authorities as *Benninga (Mitcham), Ltd.* v. *Bijstra* [1946] K.B. 58 (C.A.), in which landlords sought possession on the ground that the dwelling-house was reasonably required by them for occupation as a residence for some person engaged in their whole-time employment, etc. (1933 Act, Sched. I (*g*)) : the relevant facts were that notice to quit expired on 13th February, plaint was issued on 20th March, the person engaged in their whole-time employment commenced work on 16th April, and the action was heard on 2nd May. It was argued that the plaintiffs' " cause of action " had not been complete when they issued proceedings ; the fallacy was that the cause of action was not the reasonably requiring or the employee being engaged at all, but the determination of the tenancy on the expiration of the notice to quit. After that, it is true, the premises being within the Increase of Rent, etc., Restrictions Acts, the court had no jurisdiction to make an order for possession (" the fetter is placed on the court, not on the landlord " : *Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.)) unless satisfied of certain things—but it was satisfied, when asked to make the order, that the employee was engaged in the plaintiffs' employment.

The learned county court judge pointed out that, in effect, in the case before him the question was not whether any of the " grounds for possession " of controlled premises had been established, but whether the premises were, or were not, controlled premises ; and for such a purpose the date of the issue of the plaint was the crucial date : in support of which proposition four authorities were cited. And, as the licence to overcrowd clearly had no retroactive effect—s. 61 (1), as we have seen, provides for the grant of a licence authorising the occupier to permit persons in excess of the permitted number to sleep in the house, and the document produced very properly made no attempt to improve upon this—there was virtually no defence to the claim.

The four authorities deal substantially with the possibility of premises losing and regaining the status of controlled premises. In the first of them, *Prout* v. *Hunter* [1924] 2 K.B. 736 (C.A.), the tenant of a flat sub-let it furnished, without ever having occupied it herself ; the landlord served notice to quit and sued tenant and sub-tenant for possession ; it was held, in the words of Bankes, L.J., that the material

time at which the status of a house is to be considered was "when the landlord seeks to obtain possession"; perhaps a somewhat equivocal expression, especially as, earlier in his judgment, the learned lord justice had summarised the contention as one that the Act did not apply inasmuch as the flat was, at the time when the notice to quit was given *and* at the time *when that notice expired*, a furnished flat. In *Leslie and Co.* v. *Cummings* [1926] 2 K.B. 417, the *statutory* tenant of a flat sub-let it furnished; after the sub-tenancy in question had expired he re-occupied it (by his two daughters); the landlords then issued their plaint; it was held that the fact that a house had been let furnished for a period which has expired before proceedings are commenced cannot be relied upon as taking the house out of the protection of the Acts. Then *Turner* v. *Baker* [1949] 1 K.B. 605 (C.A.) dealt with a case in which a tenant—widow and successor of the original tenant—had, by sub-letting a furnished room with share of kitchen, excluded the Acts; the landlord had given notice to quit expiring 29th March, and on 15th June he issued the plaint; the judgment of Lord Merriman cited *Prout* v. *Hunter* as authority for the proposition that 15th June was the vital date. In the other case, *John M. Brown, Ltd.* v. *Bestwick* [1951] 1 K.B. 21 (C.A.), a tenant of combined premises, holding for a fixed term, had sub-let the residential part at a weekly rent; when the lease expired, the landlords demanded possession; soon after that the sub-tenant left, the defendant moved in with his family, and the plaintiffs *then* issued a plaint. The gist of the reasoning by which it was held that they were entitled to succeed may be found in the following passage from Cohen, L.J.'s judgment: "It is quite clear, I think, from the cases that were cited that it has been held that, in determining whether or not a house is a dwelling-house to which the Rent Restrictions Acts apply, regard must be had to the position at the moment of time when the plaint is issued. But it does not seem to me necessarily to follow that the same date must be regarded in deciding whether or not the occupier can properly claim to be *a tenant* of those premises, either as contractual tenant or as statutory tenant."

In my submission, the "regard must be had" in the above statement corrects a possible misapprehension, and in *Prout* v. *Hunter*, and again in *Turner* v. *Baker*, it was either not intended, or not necessary, to put the vital date as late as the date when proceedings were issued; for the tenants concerned were contractual tenants and the terminations of their tenancies meant that (unless the landlord obligingly accepted rent or the like) the Acts *then* ceased to affect the tenancies. "There is no longer a dwelling-house within the Act" is the way in which Scrutton, L.J., put it in *Prout* v. *Hunter*, and that change would have occurred as soon as the flat was sub-let furnished. In *Leslie & Co.* v. *Cummings* the tenant just resumed the statutory tenancy. I suggest, then (and the conclusion reached by the writer of an article on "Overcrowding and the Rent Acts" two years ago (94 SOL. J. 798) accords with this view), that the plaintiff in *Makinson* v. *Todd* became entitled to possession when his notice to quit expired. In fact, he issued a plaint next day; but I respectfully submit that the date was not *the* crucial date, the Acts not having applied at all since the overcrowding began. R. B.

HERE AND THERE

DIALOGUE OF COMFORT

THE oddest things seem to happen to Lord Jowitt, and it is with lively expectation that we look forward to the day when he publishes his memoirs and we can savour at leisure, and not merely in the fugitive snatches of legislative debate, the curiosities embedded in his experiences of people and affairs. Not long ago their lordships in the Upper Chamber, and afterwards we, the unennobled, in the public prints were privileged to appreciate the fine brushwork of his word portrait of the lady whom he visited in her room (he was specifically desired to be careful not to refer to it as a "cell") in the women's prison at Aylesbury. Even in these days of multiplied offences and longer sentences there must still be some few of us who have never been to prison and in many of them the dialogue between the lady and the lord, as reported by his lordship, must have aroused feelings of envy as they turned to battle with the frustrations of the condition still playfully called, in Britain, "liberty." This (for those of you who missed it) was the dialogue: Lady: "I like Aylesbury so much. The air is so beautiful. I have told my old man I am never going back to live up North. I have told him to buy a house in Aylesbury. The food, too, is so good and served so beautifully hot. It does make such a difference, doesn't it?" Lord Jowitt: "It certainly does." Lady: "I think of my sisters outside standing in queues in the rain and here we are so well fed." Lord Jowitt: "But you are sent to your rooms early, are you not?" Lady: "Oh yes, but the beds are so comfortable." Lord Jowitt: "What do you do then?" Lady: "We have a very good library. I like Westerns. Do you?" Lord Jowitt: "I have not read very many." Lady: "We have the best library of Westerns in the country here." Lord Jowitt: "But then the lights are put out, are they not?" Lady: "Yes, but if you want anything, you have only got to ring the bell." A bishop suggested that the lady might have been leading Lord Jowitt "up the garden path" (the figure of speech was his) but the noble and learned lord, though modestly admitting that he was aware that ladies could often deceive him, was fortified in his belief in that particular lady's sincerity by a series of half a dozen similar conversations with her room neighbours. A Home Office official, asked for his opinion, replied with old-world *savoir dire* that one could not doubt the word of an ex-Lord Chancellor, but he was inclined to controvert the assertion about those Westerns; in the provision of that amenity Wormwood Scrubbs believes that it leads Aylesbury.

HARVEST BY TANK

A MORE recent debate in the Lords was enlivened and illuminated by the recital of another of Lord Jowitt's experiences, related not in the character of a former Lord Chancellor, but in that of a one-time Kentish farmer. The occasion was an attack on a Defence Regulation which allows Government officials to use force to enter premises. A Socialist peer, judiciously eschewing the well-worn simile of the methods of the late Gestapo, had, with a flourish of historical erudition, invoked the more recondite precedent of the dragoons of Louis Quatorze. The Lord Chancellor, having firmly recalled to his recollection that this particular regulation had been in force for many years under the previous administration, expressed his sympathy with the desire to see it revoked, and Lord Jowitt profited by the opportunity to extend the front of the attack to include another Defence Regulation which gave officials wide powers of entry on land, including buildings. He spoke with all the outraged feelings of a farmer: "One day I saw a chap starting to dig up a post and gate leading into a field of spring wheat, I asked him what he was doing. He said he had been instructed to dig up the gate. I asked him who had instructed him and he gave me a name I had never heard. He went on to tell me that tanks were coming into the field that night. They duly came, with young, charming officers, and smashed up the

wheatfield. I claimed generous compensation and I got it. I could easily have put them into a field next door, where they would have had to pay no compensation at all. It seemed an unfortunate waste of money for their not having consulted the farmer. That was in 1943. Why should people behave like that nowadays." He then drew a nightmare picture of the delegates of a dozen Ministries all holding *carte blanche* to enter a house, maybe at dead of night, and see whether it was needed, and all, if challenged, confounding the helpless householder with the spell-binding verbiage: "I am coming for any of the purposes specified in s. 1 (1) of the Supplies and Services (Transitional Powers) Act, 1945." Strangely enough, the Lord Chancellor apparently felt that official licence to adopt this, on the face of it, rather startling procedure was not a branch that could be lightly sawn off the spreading tree of statutory powers.

LORD SIMON'S VITALITY

No less lively than Lord Jowitt, though within easily measurable distance of his eightieth year, is Lord Simon. He has published one record of his far-reaching recollections and is said to be projecting another with the focus on the personalities he has known in the legal world. But reminiscence is not, with him, the recreation of a leisurely retirement. He presides much in the Judicial Committee of the Privy Council and if he rarely assists at the hearing of appeals to the House of Lords it is only because of his misgivings as to the constitutional implications of the innovation of the Appellate Committee. He plays a prominent part in the legislative work of the Lords, whether in initiating the debate on prison conditions or bringing forward fundamental proposals for the reform of the House itself. There seems to be no reason why this astonishing man should ever stop.

RICHARD ROE.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Remuneration in High Court Litigation

Sir,—If solicitors are to succeed in their struggle for fair and reasonable remuneration they must use what resources are legitimately available, and one of the lawyer's main allies is his pen. I therefore ask you to grant special facilities through the medium of your columns so that we may exhort and encourage the Council of The Law Society to further and more strenuous efforts on our behalf. This method of ventilating opinion is especially important in a profession such as ours when it is not practicable for its members as a whole to discuss the matter in open debate except on isolated occasions.

It lies within our own power to bring effective and timely pressure to bear on the statutory authorities and to stress the extreme urgency of our cause.

Something in the nature of a "letter crusade" which will generate its own publicity and carry the discussion into every quarter where seasoned thought prevails is not only desirable but essential.

It has been rhetorically asked how, if solicitors are unable themselves to obtain speedy and satisfactory redress for what they consider is a justifiable grievance, can they expect the layman to place his problems with them in confident anticipation. It may be that we have not a legal remedy to support our claims, but at least we can show by the merit and quality of our written plea that if our request remains too long unheeded we do not lack the skill and tenacity rightfully ascribed to us.

The President's announcement at the special meeting of the Society on 28th November last was welcomed by all in regard to the progress made so far as conveyancing costs are concerned, but even in that field we have "scotched the snake, not killed it." Increases for contentious work seem as remote as ever, but the disturbing element is the fact that there must be an inevitable hiatus whilst the Council pursue their policy of sweet reasonableness. His statement was by way of report, and, although the meeting was later thrown open to general discussion, shortage of time unhappily prevented him then from dealing with various suggestions and inquiries which came from those who spoke. The only new proposal which the President outlined, which is to be used to fortify the arguments of the Council in their negotiations, was that solicitors who engage in litigious work should supply figures illustrating the inadequacy of the existing scales. Apart from the fact that this has to a great extent been done before, why should the profession have to prove what is now so well established? It is the increase in overheads and income tax since 1939 (which pervades every office and industry) which has reduced us to our present plight. That is the unassailable fact which (to use the words of one member) presents us with an overwhelming case in our favour on the face of it. If that is not true, then the scale was much too high previously when considered against the rise in the cost of living. There is no compensation in the litigious field analogous to the higher value of property which has in some measure assisted the conveyancer.

The outlook of the young solicitor trying to make his way since the war must be gloomy indeed. Gone is any prospect of gathering together even a modicum of capital with which to endow his family, and ruefully he must regard the substantial estates left by solicitors from the older generation. It is, however, his case which is the criterion and which should first and foremost receive the attention of the authorities. Unless it does, a feeling of resentment and bitterness will creep into his thoughts at the statutory body which governs his remuneration, incompatible with the best traditions and sentiments of the profession. He cannot be expected to wait patiently hoping for an improvement in his lot at some future date, whilst shouldering the unremunerative burden of litigious work in his practice, and at the same time he dare not discard it.

There are those of us who have deplored any hint of retaliatory measures such as sanctions in regard to the legal aid scheme, but one wonders if those members are not in some degree activated by their own personal circumstances, such as a lucrative practice, independent of legal aid and county court work, and who are not obliged to subsidise a branch of the practice.

It must be clear from the atmosphere of the last two meetings that concern has now degenerated into discontent, and although perhaps not sufficiently intrepid to voice their feelings, many have expressed in private that which they hesitate to utter before their elders in Council. They regard with frustration the statutory instruments which deprive them of the just rewards for the specialised knowledge so hard acquired. They look through the net, which, once woven to protect them, now binds them so harshly, and wonder why their elected Council so well qualified to regulate their affairs should not be empowered to exercise unfettered dominion over the subject of fees.

No more striking example of concerted action by a professional body could be cited than the recent successful campaign by doctors to implement the wishes of the majority. There was no public outcry or disdain at forthrightness when they were voicing their demands in unequivocal terms, nor did they fall into disrepute as a result. We, as solicitors, should emulate them, or the present impasse may leave permanent scars. The best way of keeping the subject to the forefront whilst the Council's negotiations continue is by publication in the appropriate journals of the profession's views as a whole. Let those who believe in the justice and urgency of our cause breach the gulf between now and the next meeting of the Society and keep alive the topic by establishing a forum for the written expression of their views and proposals.

KEITH MOUNTFORT.

London, W.1.

L.C.C. DEVELOPMENT PLAN INQUIRY

Objections relating to Lewisham and Greenwich will begin to be heard at 10.15 a.m. on Monday, 5th January, at the inquiry into objections to the development plan for the County of London.

Mr. H. T. Michelmore, solicitor, of Exeter, left £32,064 (£30,486 net).

Mr. A. E. Wodehouse, solicitor, of Lincoln's Inn, left £8,909 (£8,235 net).

Mr. A. H. Adcock, retired solicitor, of Birmingham, left £23,616.

TALKING "SHOP"

TUESDAY, 2ND *December*, 1952

Some little time ago there was a small commotion about the correct method of endorsing engrossments; some maintained that the name of the solicitor concerned should be left to blush unseen upon the draft. The matter, *de minimis* or not, was, I believe, satisfactorily settled by The Law Society. Whatever view one may have taken of that, there should be general agreement that the purpose of an endorsement is rather to advertise the contents of the document than its authorship.

Of course, there are certain documents which by their nature do not lend themselves to the descriptive endorsement. "Will of Mr. XYZ" should be adequate in most cases. Personally, I never put more than that unless (as sometimes happens) Mr. XYZ is making a conditional will or is disposing of only a part of his fortune. In such cases it is sometimes helpful to put "in contemplation of marriage" or "limited to property in the United Kingdom" (or as the case requires).

Then, again, there are documents of such a complicated nature that it would be worse than misleading to attempt to condense their effect in a three-line endorsement; deeds of family arrangement usually belong to this class. But what can one say of the description "appointment" used indiscriminately and *simpliciter* in family trusts? The result, as a rule, is a higgledy-piggledy heap of appointments of trustees and appointments of funds.

I must leave it to a more erudite contributor to explain why the lease is an exception to the general rule of slipshod endorsements. By tradition the endorsement of a lease is usually impeccable; there you may find the parties, the property, the term and the rent. And long leases usually bear on the outside a neat little sum giving the date of expiry. (Sometimes the draftsman is better at drafting than at arithmetic and gives the wrong date, but at least the intention is praiseworthy.)

WEDNESDAY, 3RD

Worse than the uninformative or cryptic endorsement is the misleading endorsement. Recently I was concerned with the sale of a London property; the price was large, the parties were in a hurry and the date fixed for completion was just round the corner. But where was the legal estate? The title deeds seemed to carry us no further than a series of mortgages vested in the vendors as personal representatives. In brief, there seemed to be nothing to show how the testator had acquired the equity of redemption. We were already talking of title by adverse possession and statutory declarations when somebody discovered that a document endorsed "transfer of mortgage" not only transferred certain mortgage terms but as an afterthought conveyed the equity of redemption as well. Not, I agree, that this is any excuse for not reading the document.

MONDAY, 8TH

When considering (say) a question of construction, it seems all too easy to become embroiled in fiscal legislation. Take the term "personal chattels" as defined by Form 2 of the Statutory Will Forms, which includes "carriages, *horses*, stable furniture and effects (*not used for business purposes*) . . ."; if I read it aright, the parenthesis relates back as far as "carriages"; the carriage is before the horse, but no matter. Well then, is a race-horse a "personal chattel"? Not, I suggest, a question that can be concisely answered in the abstract. The financier may keep a few race-horses as a pastime; or he may retire from the City and keep a few directorships for the same purpose.

One may, of course, go on and explore the highways and byways of income tax. Does not para. 8 (4) of Sched. XX to the 1952 Act exempt from s. 473 animals kept for racing or other competitive purposes? And have not stud-farms been treated under Case VI of Sched. D? These missionary journeys may be justified upon the argument that if a horse has established its business-like quality in Tax Cases it is *prima facie* a business-like horse in Chancery. Perhaps of all the utterances from the Bench that descend into the stillness of the court, the solicitor may be most envious of the prologue: "Viewing this matter as I do, free from authority . . ."

WEEK-END REFLECTIONS

The Stone Age, the Bronze Age, the Iron Age . . . This, if it is not known as the Atom Age, will surely be remembered as the Paper Age. Never, perhaps, was that useful maxim of equity—that that is done which ought to be done—so much dissembled into the grand illusion that words are a substitute for deeds.

Between 8th July and 26th August last—a period of, say, seven weeks—there were published some 300 Statutory Instruments, an average output of, say, six a day, including Sundays. The series starts with The Pneumoconiosis and Byssinosis Benefit (Amendment) Scheme (S.I. 1952 No. 1301) and concludes with The Retention of Cable and Main under Highway (Wiltshire) (No. 1) Order, 1952 (S.I. 1952 No. 1600). Then, those who are interested in such things may learn from The Assistant Nurses Rules, Approval Instrument, 1952 (S.I. 1952 No. 1412), Pt. I, Sched. IV, that the approved style of Blouse No. 2 is a polo collar with bishop sleeves and back gathered into shallow yoke; moreover, the wearer may at her option, unlike a bull, have six gores. For more advanced students with a scientific bent there is S.I. 1952 No. 1492, which tells us in an explanatory note—lest the point might be overlooked—that 2-(p-acetamidobenzene-sulphonamido-) pyrimidene is a substituted arylsulphonamide.

More than 10 per cent. of the orders during the selected period—to be exact I make it thirty-four out of 300—are devoted to stoppage of highways, nor do I count in this figure kindred subjects such as retention of cables and diversion of trunk roads. Characteristic is S.I. 1952 No. 1595, from which one may learn of the stopping-up, by the Minister's authority, of *seven yards* of the Ninfield Road, East Sussex, near the New Inn public house. It is to be hoped that the clientèle were not inconvenienced.

There is nothing new in all this and, perhaps, it is idle in a highly organised society to repine at the miscalled "spate" of delegated legislation. I say "miscalled" because a spate comes down with a rush and abates; at its first rise and fall the salmon-fisher goes on his way rejoicing. The case with statutory instruments is quite otherwise; they resemble the waters of Babylon, whereat the children of Israel sat down and wept.

It is not, perhaps, the multiplicity nor even the more than occasional obscurity of these orders that constitutes the major nuisance; it is the extraordinary difficulty of satisfying oneself that all the orders on any given subject have been traced. *Butterworth* and other publications greatly help in this, but it would be better still if Statutory Instruments were grouped and numbered at source according to subject-matter. There should, I suggest, be at least three main groups—general, special and local. To the first would be assigned orders affecting the community at large; to the second, those affecting industrial or other sections of the community (by sub-groups); to the third, highway stoppage orders and such-like small beer. Thus, if faced with an agricultural question—say class A of group 2—it should be possible to study all the "farming" orders together and in sequence with some hope of coming through the rye.

"ESCROW"

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

PRACTICE NOTE: PRIVY COUNCIL APPEALS

Lord Simonds, L.C., Lord Morton of Henryton and Sir Lionel Leach. 18th November, 1952

At the hearing of an appeal from the West African Court of Appeal, one of the points taken for the appellant was that the court below had given no reasons for their judgment. The Judicial Committee Rules, 1925, provide, by r. 16: "The reasons given by the judge, or any of the judges, for or against any judgment pronounced in the course of the proceedings out of which the appeal arises, shall by such judge or judges be communicated in writing to the registrar and shall be included in the record."

Sir LIONEL LEACH, delivering the judgment of the Board, said that the appellant's contention showed a misconception of the rule. It did not say that the court below must give reasons for their decision; it merely enjoined that when reasons were given they must be communicated to the registrar. No reasons were given, and therefore there was nothing to communicate. Appeal dismissed.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF APPEAL

EASEMENT: CLAIM TO PASTURAGE BY PRESCRIPTION

Davies and Another *v.* Du Paver

Singleton, Birkett and Morris, L.JJ. 6th November, 1952

Appeal from Portmadoc County Court.

The plaintiff and defendant owned and occupied neighbouring upland farms adjoining which were sheepwalks. Between May and 9th August, 1950, the defendant fenced in a certain area of sheepwalk which was his own property. The plaintiff and his solicitors protested strongly while the work was going on, as the plaintiff claimed a prescriptive right of pasturage over the area being fenced. No further action was, however, taken until the plaintiff took out a summons on 28th September, 1951. In the county court the plaintiff alleged a prescriptive right under the Prescription Act, 1832, by reason of sixty years' enjoyment by himself and his predecessors of the alleged pasturage. The defendant alleged (1) that the plaintiff's user had not lasted for any period required by law; (2) that it had been interrupted, with the plaintiff's acquiescence, for more than one year before proceedings brought, so that it was defeated by ss. 1 and 4 of the Act; and (3) that the defendant and his predecessors in title must, if the plaintiff was to succeed, have had knowledge, actual or constructive, of the user, and have had the power to object to it; whereas, the fact was that the defendant's holding had been let for most of the time, so that knowledge could not be imputed to the then servient owner. The judge held that the plaintiff and his predecessors had exercised the alleged user as of right for sixty years; that the exercise of such right had been "common knowledge"; and gave judgment for the plaintiff. By s. 1 of the Act no claim of the type now in question "shall, where such right, profit or benefit shall have been actually taken and enjoyed by any person . . . without interruption for the full period of thirty years, be defeated . . . by showing only that such right . . . was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is liable to be defeated . . ." By s. 4: ". . . each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim . . . shall be brought into question; and no act . . . shall be deemed an interruption . . . unless the same shall have been . . . submitted to or acquiesced in for one year after the party interrupted shall have had . . . notice thereof . . ." The defendant appealed. The plaintiff, who had relied below on the Act, now sought to rely also on the common law.

SINGLETON, L.J., said that to succeed under s. 1 user must have been without interruption. Between 9th August, 1950, and the issue of the summons in September, 1951, there was no evidence of any protest by the plaintiff against his exclusion. Although that might not constitute acquiescence under s. 4, it was difficult to hold that it was not submission. Help was to be had from *Bennison* v. *Cartwright* (1864), 5 B. & S. 1, where after a period of protests there followed more than a year of inactivity. The plaintiff could not now put forward a claim under the common law, which had not been argued below.

BIRKETT, L.J., said that "submission to or acquiescence in" was a state of mind evidenced by the conduct of the parties, and was a fact to be found by the judge. The fact that the plaintiff had done nothing for a year was some evidence of submission; but his protests before and his taking action after that period were also evidence to the contrary. It would not be right to disturb the finding below that acquiescence or submission were not established. The plaintiff's claim must, however, be "as of right" (see s. 5 of the Act and *Bright* v. *Walker* (1834), 3 L.J. Ex. 250). That involved knowledge or means of knowledge on the part of the servient owner. That knowledge the judge had purported to find by the phrase "common knowledge"; but there was no evidence on which to find that such knowledge extended to the servient owner during the period when his tenement was let. Accordingly the claim "as of right" failed.

MORRIS, L.J., agreed with the judgment of Birkett, L.J. Appeal allowed.

APPEARANCES: *W. L. Mars-Jones* (*Hall, Clark, Goldhawk and Jutsum & Co.*, for *Gwyndaf Williams & Roberts*, Portmadoc); *G. Dare* (*Jaques & Co.*, for *David Thomas, Williamson & Co.*, Llanrwst).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

MINES: FALL OF ROOF: LIABILITY OF OWNER

Marshall *v.* Gotham Co., Ltd.

Somervell, Jenkins and Hodson, L.JJ. 21st November, 1952

Appeal from Jones, J.

Section 23 of the Metalliferous Mines Regulation Act, 1872, read in conjunction with art. 7 (3) of the Metalliferous Mines General Regulations, 1938, provides: "The following general rules shall, so far as may be reasonably practicable, be observed in every mine . . . The roof and sides of every travelling road, outlet and working place shall be made secure, and no person, unless engaged in repairing or in investigating the safety of the workings shall travel in or work in any travelling road or working place which is not so made secure." The plaintiff's husband was killed by a fall of roof in the defendants' gypsum mines; the fall was caused by the presence of "slickenside," a substance which does not combine with other soil, and whose presence is likely to cause a fall. It had not been found in the mines for eighteen years. The defendants did not use timbering, but the roof was tested by a long hammer, and if there appeared to be unsoundness, it was brought down. Since the accident the defendants had used pneumatic props where the presence of slickenside was suspected. In the action negligence at common law and breach of statutory duty were alleged. Jones, J., held that the defendants had not been negligent but were in breach of statutory duty. While they had done nothing to prevent a fall, the fact was that the cost of timbering would be prohibitive. They might, however, have made use of the hydraulic props, which might well have prevented the accident. The defendants appealed.

SOMERVELL, L.J., said that he agreed with the judge on the issue of negligence. As to statutory duty, the possibility of the presence of slickenside was one which no one had, or could have, expected in the particular mine. The evidence showed that the men would have objected to being required, as a regular practice, to put props under roofs which had been tested by the usual hammer method, which all believed to be safe. In that particular mine, such a method was an observation of the rule as to security so far as was reasonably practicable, having regard to the local circumstances. He was supported in this view by *Edwards* v. *National Coal Board* [1949] 1 K.B. 704. The appeal should be allowed.

JENKINS and HODSON, L.JJ., agreed. Appeal allowed. Leave to appeal.

APPEARANCES: *A. P. Marshall*, Q.C., and *A. E. James* (*Smith & Hudson*, for *Eking, Manning & Co.*, Nottingham); *R. T. Paget*, Q.C., and *E. Ling Mallison* (*Hawley & Rodgers*, Loughborough).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

BUILDING REGULATIONS: DISMANTLING SCAFFOLDING

Sexton *v.* Scaffolding (Great Britain), Ltd.

Somervell, Jenkins and Hodson, L.JJ. 26th November, 1952

Appeal from Donovan, J. ([1952] 2 T.L.R. 63; *ante*, p. 463).

The plaintiff, a scaffolder, fell to the ground and was injured while engaged in dismantling scaffolding erected against the wall of a building. He was working more than 6 feet 6 inches from the ground and the guard-rail had been removed. He sued his employers for breach of statutory duty and for negligence. The Building (Safety, Health and Welfare) Regulations, 1948, provide, by reg. 2 (1): "These regulations shall apply to . . . the construction, structural alteration, repair or maintenance of a building . . . the demolition of a building . . . and to machinery or plant used in such operations"; by reg. 4: ". . . it shall be the duty of . . . every employer of workmen who erects or alters any scaffold to comply with such of the requirements of regs. 5–30 as relate to the erection or alteration of scaffolds . . ."; by reg. 24 (1): ". . . every side of a working platform . . . being a side thereof from which a person is liable to fall more than 6 feet 6 inches, shall be provided with a suitable guard-rail . . ." Donovan, J., gave judgment for the plaintiff, holding that the defendants were in breach of reg. 24 (1) and were also liable for negligence at common law. The defendants appealed.

SOMERVELL, L.J., said that it could not be contended that the regulations did not apply to scaffolders, as scaffolding was clearly "plant" within reg. 2 (1), and there was a clear reference to scaffolding construction in reg. 4. On the other hand, it was clear that some of the regulations, owing to their language, were inapplicable to the process of erecting scaffolding at the initial stage and dismantling it at the final stage. The judge below had held that reg. 24 applied; but the dismantling of scaffolding had to be regarded as a single operation, in which the removal of the guard-rail was an essential part which had to be done at some time or another. When dealing with a single operation which involved either the erection or the taking down of the safety device provided for, words could not be read into the regulations that that must be done at the first or last moment. Accordingly, reg. 24 (1) did not apply, and the defendants were not in breach. A consideration of the evidence and of the circumstances showed also that they had not been guilty of negligence.

JENKINS and HODSON, L.JJ., agreed. Appeal allowed.

APPEARANCES: *S. Chapman* (*L. Bingham & Co.*); *A. A. H. Marlowe*, Q.C., and *H. T. Buckee* (*Berry Tompkins & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

CHANCERY DIVISION

WILL: BANK SOLE EXECUTOR: MONEY DEPOSITED WITH ITSELF

***In re* Waterman's Will Trusts; Lloyds Bank, Ltd. *v.* Sutton and Others**

Harman, J. 18th November, 1952

Adjourned summons.

The testatrix appointed Lloyds Bank, Ltd., her sole executor and trustee; the appointment provided that the bank was authorised, "without accounting for any resultant profit [to] act as attorney and [to] perform any service on behalf of my estate on the same terms as would be made with a customer." After the death of the testatrix, the whole estate, amounting to some £9,000, was placed by the bank on deposit with itself at ½ per cent.

HARMAN, J., said that no beneficiary had wished to attack the bank on the basis that there was a breach of trust, and it was impossible in an administration suit started not by writ but by summons to charge the bank with wilful default. It had to be assumed, therefore, that there was no breach of trust, but only such a want of judgment as the court could excuse. A paid trustee like the bank was expected to exercise a higher standard of diligence and knowledge than an unpaid trustee, and a bank which advertised itself in the Press as taking charge of administration was under a special duty. If any private trustee chose to place his beneficiaries' money on deposit in his own business, the court, without hesitation, charged him interest at 5 per cent., whether or not he had made a profit. Assuming that deposit with another bank was a proper use of this money, he (the learned judge) thought that deposit by the bank with itself—being part of a service which a bank regularly rendered to its customers—was a service of which a bank need not account for any resultant profit. Accordingly, to that extent the words in the appointment clause justified what the bank had done, and the bank was not accountable for the difference between the deposit interest and the interest which it must be supposed to have earned.

APPEARANCES: *Milner Holland*, Q.C., and *R. Goff* (*Burton, Yeates & Hart*, for *Nye & Donne*, Brighton); *E. I. Goulding* and *E. G. Wright* (*Ranger, Burton & Frost; Church, Adams, Tatham and Co.*, for *Barwell & Blakiston*, Seaford).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: GIFT TO HOSPITALS: FORFEITURE IF UNDER GOVERNMENT CONTROL

***In re* Buzzacott; Munday *v.* King's College Hospital**

Wynn Parry, J. 19th November, 1952

A testator directed his trustees to divide a part of his residuary fund equally between the Royal Eye Hospital, Waterloo Road, London, and the Royal Cancer Hospital, Fulham Road, London, "provided that if any of the funds of the above-mentioned institutions shall have come under Government control at the date of my death," then the gifts should be forfeited and a defeasance clause should take effect. The testator died on 23rd July, 1949. Under the National Health Service (Designation of Teaching Hospitals) (No. 2) Order, 1948, the two hospitals in question were designated as teaching hospitals.

WYNN PARRY, J., said that the effect of the relevant provisions of the National Health Service Act, 1946, could be summed up as follows: The Act set out to achieve the object of establishing a comprehensive health service in which hospitals were to play a very important part. The overriding control was given to the Minister of Health because his was made the duty of constituting and administering that service. For the purpose of carrying out the objects of the Act, the buildings, equipment, furniture and moveable property of all hospitals were vested in the Minister. So far as endowment funds were concerned, a distinction was made as between teaching hospitals and non-teaching hospitals. In the latter case, the endowment funds were vested in the Minister; in the former case, they were vested in boards of governors. They were, however, even in the case of boards of governors, freed from the trusts which, before their transfer to such boards, affected them, and the boards of governors were placed under the duty, through the use of the word "trust," to give effect to the purposes of the Act, bearing in mind any special trusts or conditions under which the endowment funds were previously held and to which the giving effect would not be inconsistent with the main purposes of the Act. But where there would be any such inconsistency, the policy of the Act was to prevail over the wishes of those who established the endowment funds. The board of governors in each case was subject to the Minister, who had a very substantial voice in the appointment of the members of those boards of governors, and in appropriate cases could remove the whole board. In those circumstances it was impossible to come to the conclusion that the endowment funds taken over by a board of governors of a teaching hospital could any longer be said to be free funds. They were, within the meaning of the phrase of the will, now under "Government control."

APPEARANCES: *A. H. Droop* (*Carter & Barber*, for *Neale, Watts & Phillips*, Brighton); *H. E. Francis*, *E. I. Goulding* and *N. S. S. Warren* (*Raymond-Barker, Nix & Co.; Farrer & Co.; Ranger, Burton & Frost; Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

AGENCY: PRINCIPAL BECOMING ENEMY: CONTINUANCE OF FIDUCIARY RELATIONSHIP AFTER TERMINATION OF AGENCY

Nordisk Insulinlaboratorium *v.* Gorgate Products, Ltd. (sued as C. L. Bencard (1934), Ltd.)

Vaisey, J. 19th November, 1952

Action.

Shortly before the outbreak of the second world war, the plaintiffs, a Danish corporation, deposited a valuable stock of crystallised insulin with a bank in England; they were therein assisted by the defendants who acted as their agents. After the invasion of Denmark by Germany in March, 1940, the plaintiffs

became enemies within the Trading with the Enemy Act, 1939. On 15th May, 1940, the President of the Board of Trade vested in the Custodian of Enemy Property the right to sell the insulin and the defendants acquired it for £9,623 3s. and resold it for £13,169 8s. 6d.

VAISEY, J., said that the defendants were liable to account to the plaintiffs for the profit which they had made on resale of the insulin, by reason of the fiduciary relationship which continued after the agency had terminated. There was here no actual vesting of the property in the Custodian and, presumably, the proper view was that the ownership was in suspense (*Hugh Stevenson & Sons, Ltd.* v. *Akt. für Cartonnagen-Industrie* [1918] A.C. 239, 249–50). The proper conclusion was that the defendants held the sum of £3,546 5s. 6d. at the date of the writ as trustees for the plaintiffs, or that the plaintiffs were entitled to that sum as damages for breach of duty or breach of trust. On any view, it would be unconscionable for the defendants to withhold this sum from the plaintiffs. Had it not been for the information acquired by the defendants in the course of their agency with the plaintiffs, the defendants would probably never have heard of this stock of insulin; nor would they have had the chance of buying it and reselling it on such advantageous terms. Judgment for plaintiffs in the sum of £3,546 5s. 6d. with interest at 4 per cent. from the date of the writ.

APPEARANCES: *F. W. Beney*, Q.C., and *G. R. Hoare* (*Roche, Son & Neale*); *J. G. Strangman*, Q.C., and *D. S. Chetwood* (*W. Wallace Harden*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: NAME AND ARMS CLAUSE: MARRIED WOMAN AS TENANT FOR LIFE

In re Kersey; Alington *v.* Alington

Danckwerts, J. 26th November, 1952

Adjourned summons.

The testator provided by his will that every person (other than a peer or peeress) who under his will became entitled as tenant for life to the receipts of the rents and profits of certain premises should use the name and arms of Kersey, and if he failed or discontinued to use and bear the same there should be a forfeiture of his interest one year or immediately after such discontinuance, and certain provisions of defeasance should come into operation. The tenant for life was a married woman who had made no attempt, and did not want, to use and bear the name and arms of Kersey.

DANCKWERTS, J., said that though in the present case the testator had attempted to provide for every contingency, the clause failed for uncertainty and it was also contrary to public policy. It was very undesirable that a wife should have to bring pressure upon her husband to change his name in order that she might not be deprived of an estate to which she had succeeded. He (the learned judge) could not conceive anything more likely to cause differences between husband and wife than a clause containing a provision of this character. It illustrated the fatuity of trying to impose obligations of this sort which were out of date and inconsistent with the spirit of the times. Declaration that the clause was ineffective and invalid.

APPEARANCES: *D. H. McMullen* (*Park Nelson & Co.*); *A. J. Balcombe*; *K. J. T. Elphinstone* (*Sandom, Kersey and Tilleards*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: GIFT TO HOSPITAL "IN NEED": NATIONALISATION OF HOSPITALS

***In re* Perryman; National Provincial Bank, Ltd. *v.* Perryman**

Danckwerts, J. 27th November, 1952

Adjourned summons.

The testator directed his trustees to pay one-half of his residuary estate to "any three hospitals in the County of Devon which in [their opinion] are most in need of it." The National Health Service Act, 1946, came into operation on 5th July, 1948, and the testator died on 3rd September, 1948.

DANCKWERTS, J., said that the question which he had to decide was whether the hospitals vested in the Ministry of Health qualified for the gift. If the funds of the national Exchequer and money available from the taxpayer were unlimited, and available in quantities beyond any possible need, that might have been a valid argument, but there was an affidavit by the secretary of the South-Western Regional Hospital Board which stated, *inter alia*, that, owing to shortage of funds, the progress of hospital developments and improvements, designed to produce an equal standard of efficiency as between different hospitals, was necessarily slow, and the existing inequalities were certain to exist for a very long period. While it was true that if the funds provided by the Exchequer were unlimited there could be no need for assistance whatever demands were made on them by the hospitals, it was plain on the evidence that that was not the case. In present times the Exchequer was not able to provide funds for all the needs of the hospitals and maintain a proper standard for every hospital vested in the Minister. It was not, therefore, correct to say that none of the hospitals vested in the Minister of Health was in need of additional funds beyond those provided by Parliament. It was plain on the evidence that they were therefore entitled to benefit from the funds left by the will of the testator.

APPEARANCES: *G. A Rink* (*White and Leonard*, for *Parsons and Outfin*, Brixham); *Michael Browne* (*Bevan Hancock and Co.*, Bristol); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

BANK: ENEMY CUSTOMER: EFFECT OF OUTBREAK OF WAR

Arab Bank, Ltd. *v.* Barclays Bank (Dominion, Colonial and Overseas), Ltd.

Parker, J. 11th November, 1952

Action.

On midnight of 14th and 15th May, 1948, the British Mandate in Palestine terminated and war broke out between Israel and the Arabs. At that date the plaintiffs had a credit of £583,000 on current account at a branch of the defendants which was inside Jewish territory, while the plaintiffs' office was in Arab territory. Pursuant to subsequent legislation in Israel, the defendants paid the balance to the Custodian of Absentee Property. The plaintiffs now claimed repayment.

PARKER, J., said that the law of Israel incorporated the law of England as to abrogation of contracts on the outbreak of war, and it was said in *Scharing's* case [1946] A.C. 219, at p. 240, that "the effect of the outbreak of war . . . is to abrogate or destroy any subsisting right to further performance, other than the right to the payment of a liquidated sum of money, which will be treated as a debt and will survive the outbreak of war." The plaintiffs contended that their contract with the defendants was abrogated and the current account balance wiped out, but that as laid down in the *Fibrosa Spolka* case [1943] A.C. 32, a new obligation was imposed by law, under which, to prevent unjust enrichment of the defendants, payment was suspended until the end of hostilities, unless as a result of legislation the new debt had vested in the custodian. The defendants contended that the credit balance was "a liquidated sum of money," payment of which was merely suspended. Sir Arnold McNair's view was that it was inconceivable that "upon the outbreak of war an English banker's obligation towards an enemy customer is *ipso facto* destroyed"; the Trading with the Enemy (Custodian) Order, 1939, made payable to the custodian any "debt, including money in the possession of any bankers, whether on deposit or current account," thus treating a bank balance as a debt, although there had been no demand. Accordingly, if the plaintiffs were right, considerable sums had been wrongly paid to the custodian. A consideration of *Joachimson* v. *Swiss Bank Corporation* [1921] 3 K.B. 110 showed that a credit on current account was not due until demanded. But for that, the position would be clear; on the outbreak of war, the debt would not be wiped out, but payment would be suspended. A full consideration of that case indicated that the credit balance could be considered as "a liquidated sum of money," notwithstanding the absence of a demand, and the right to payment was not wiped out but merely suspended. There must accordingly be judgment for the defendants.

Judgment for the defendants.

APPEARANCES: *Sir Andrew Clark*, Q.C.; *M. Lyell* and *Jamal Nasir* (*Stoneham & Sons*); *Sir Hartley Shawcross*, Q.C., and *Rodger Winn* (*Durrant Cooper & Hambling*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: INSUFFICIENT DEDUCTION OF INCOME TAX: TENANT'S RIGHT TO RECOVER

Turvey *v.* Dentons (1923), Ltd.

Pilcher, J. 14th November, 1952

Action.

The plaintiff held certain premises in New Bond Street, W., on a lease for 2,000 years. In 1946 the defendants, through their secretary, *L*, took a lease of the premises for a term of ninety-nine years. The defendants' main business was at Gloucester, where it was managed by *B*, the assistant secretary. *L* informed *B* that a lease had been executed, without stating its term. *B*, who assumed from previous transactions that it was a ten-year lease, caused rent to be paid quarterly to the plaintiff, less Schedule A tax only, whereas under the provisions of the Finance Act, 1940, the lease was a "long lease" under which the defendants were entitled to deduct income tax at the standard rate. When the defendants became aware of this, they withheld the rent; and on action being brought they claimed to set off against the rent withheld the overpayments of income tax which they had made, and to recover the surplus from the plaintiff, contending that it was money had and received to their use.

PILCHER, J., said that the defendants had made the overpayments under a mistake of fact, as *L* did not know how the rent was being paid and *B* did not know that it was a long lease. Where a company by one agent made overpayments, it was entitled to recover them though another agent might know the true position, provided that the second agent did not know that overpayment was being made (*Anglo-Scottish Beet Sugar Corporation, Ltd.* v. *Spalding U.D.C.* [1937] 2 K.B. 607). The plaintiff had contended that she had a legal right to be paid the full rent, less a deduction at the time of payment for income tax at the standard rate, and that all successful claims for money had and received were founded on the fact that the payment had not been legally due. As to that, the defendants had not only discharged all proper tax obligations but had paid, in addition, sums to the plaintiff for which she would not have to account to the Revenue. She was not legally entitled to such sums. It was next contended that, if a tenant failed to deduct standard tax at the appropriate time, there was no subsequent legal process by which he could recover an overpayment; but on principle there seemed to be no reason why such an overpayment should not be recovered in the same way as any other sum paid under a mistake of fact (see *Denby* v. *Moore* (1817), 1 B. & Ald. 123; *Ord* v. *Ord* [1923] 2 K.B. 432, and *Lamb* v. *Brewster* (1879), 4 Q.B.D. 220, 607). Accordingly, the remedy by deduction was not exclusive (*In re Hatch* [1919] 1 Ch. 351). It followed that there was nothing to prevent the defendants from recovering the overpayments in accordance with the general rule applicable to inadvertent payments made under a mistake of fact, and they would have judgment for £658, being the sum claimed, less the rent withheld. Judgment for the defendants.

APPEARANCES: *P. M. B. Rowland* (*Last, Sons & Fitton*); *G. Avgherinos* (*Littman & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

NEGLIGENCE: PLATELAYER KILLED BY CONTACT WITH LIVE RAIL

Hawes *v.* Railway Executive

Pilcher, J. 19th November, 1952

Action.

The plaintiff's husband, an experienced permanent way worker, was making adjustments to the track of a suburban electrified line. The weather was wet at the time. He slipped in some way, fell back on to the live rail, and was killed. The plaintiff brought an action for negligence, alleging that the current should have been cut off, or a protective rubber mat provided. The defendants denied negligence, and alleged that the accident was solely caused, or was contributed to, by the negligence of the deceased in allowing himself to slip.

PILCHER, J., said that, in view of the weather, a rubber mat would have been useless. The defendants issued instructions to their employees regarding cutting off the current, but did not specify in detail the operations which required such action; they left it to the discretion of their employees, who were skilled and experienced, to decide when such a step was necessary. The evidence showed that fatal accidents of this nature were very rare. *Speed* v. *Thomas Swift & Co.* [1943] K.B. 557 showed that all precautions must be taken which were reasonable in the circumstances, and a circumstance to be considered was the dangerous nature of the work. In *Latimer* v. *A.E.C., Ltd.* [1952] 2 Q.B. 701, *ante*, p. 376, Denning, L.J., had said that an employer was not bound to take extreme measures against every foreseeable risk. Taking all the circumstances into consideration, it could not be said that, as a reasonable precaution, the current should have been cut off. If that was done for every minor job, the electrified lines would be immobilised. Judgment for the defendants.

APPEARANCES: *S. Chapman* (*W. H. Thompson*); *Marven Everett*, Q.C., and *J. Hayman* (*M. H. B. Gilmour*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PRACTICE NOTE: FAILURE TO CALL A WITNESS

Hilbery, J. 19th November, 1952

HILBERY, J., said that it was irregular for counsel, after he had closed his case, to offer to call a witness if comment was made on the failure to call that witness. At that stage counsel had no right to make a substantive application, except to call evidence in rebuttal. If counsel considered that the disadvantages of calling a certain witness outweighed the disadvantages of comment and had so conducted his case, he had no right to offer to call that witness after the close of the defendant's case. It was not proper to seek to eliminate comment in that way.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: OCCUPATION OF FLAT OVER BUSINESS PREMISES BY DIRECTOR: WHETHER TENANT OR LICENSEE

Murray Bull & Co., Ltd. *v.* Murray

McNair, J. 21st November, 1952

Action.

In 1939 the defendant, who was then managing director of the plaintiff company, who were consulting chemists, was let into possession of a flat over the company's premises near Knightsbridge, which comprised laboratories and offices from which direct interior access was had to the defendant's flat. The agreement, embodied in a board minute, provided that the defendant should have a lease for seven years "or until the termination of his managing directorship, whichever is the shorter," subject to the right of the plaintiffs to terminate the lease if they sold the premises. The rateable value of the flat was £64. When the agreement ran out in 1946 the defendant continued in possession. In 1950 the defendant notified his resignation as managing director and, in subsequent correspondence, it was agreed that the defendant should remain "as a quarterly tenant" until the plaintiffs required the premises. In 1951 the plaintiffs notified the defendant that they required possession, but he refused to quit. On an action brought by the plaintiffs for possession and damages for trespass, they contended that the defendant was a licensee at the material times. The defendant contended that he was protected by the Rent Acts, as (*a*) he had been a statutory tenant since 1946, or (*b*) if he had been a contractual tenant, he had continued as such and was not a licensee.

MCNAIR, J., said that, on the first point, the relationship of the parties was fundamentally that of employer and employee. After 1946 the defendant had held over on the terms of the minute. The plaintiffs would never contemplate letting the flat with its access to their premises below except to a person with right of access thereto, so that the defendant had held over on the same terms as a contractual tenant. Secondly, regarding the nature of the occupation after 1950, the defendant had relied on the expression "quarterly tenant"; but *Errington* v. *Errington* [1952] 1 K.B. 290, *ante*, p. 119, showed that, although a person let into exclusive possession was *prima facie* a tenant, the surrounding circumstances might show that he was a licensee if it appeared that the occupier had been granted a mere personal privilege, with no interest in the land. After a consideration of that case, and also of *Marcroft Wagons, Ltd.* v. *Smith* [1951] 2 K.B. 496; 95 SOL. J. 501, the proper inference was that what had been agreed was a friendly arrangement that the defendant should have the flat so long as the plaintiffs did not need it. That amounted to a licence only. Accordingly, there would be judgment for the plaintiffs for possession and £664 damages for trespass. Judgment for the plaintiffs.

APPEARANCES: *A. R. Campbell* and *P. A. Bruce* (*Barnett, Tuson & Co.*); *M. O'C. Stranders* (*Peachey & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

HABEAS CORPUS: ALLEGED WRONG MODE OF PREVENTIVE DETENTION

R. *v.* Governor of Wandsworth Prison; *ex parte* Silverman

Hilbery, Streatfeild and McNair, JJ. 25th November, 1952

Application *ex parte* for a writ of habeas corpus.

The Criminal Justice Act, 1948, provides by s. 52 that the Secretary of State shall make rules for the management of prisons, etc. By subs. (4): "Rules made under this section shall provide for the special treatment of the following persons while required to be detained in prison, that is to say—(*a*) any person serving a sentence of preventive detention." The applicant, who was undergoing a sentence of preventive detention in Wandsworth prison, applied for a writ on the ground that he was not receiving special treatment in accordance with the Act, but was being treated as an ordinary prisoner in an ordinary prison. It was contended on his behalf that, even if the complaint was not a ground for release, he ought to be transferred to a place where the special conditions were in force.

HILBERY, J., said that the application was misconceived. If a writ was issued, the only question would be whether the applicant should be released or not; and the prison governor's return would state that he was being detained under a sentence of preventive detention, which would be a perfectly good answer. Application dismissed.

APPEARANCES: *J. Sofer* (*Peter Kingshill*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

HUSBAND AND WIFE: JUSTICES: CONFLICT OF JURISDICTION: EXISTING DECREE OF JUDICIAL SEPARATION

Cooper *v.* Cooper

Lord Merriman, P., and Davies, J. 15th October, 1952

Appeal to the Divisional Court.

The parties were married in 1931. In January, 1945, the wife filed a petition for judicial separation on the ground of adultery, on which a decree was pronounced on the 9th October, 1946, at the Leeds Assizes. The wife then applied by a summons in the Grimsby district registry for permanent alimony on the 15th November, 1947. This application was adjourned *sine die* in January, 1948, to enable the parties to enter into an agreement for maintenance and such an agreement was, in fact, entered into on 1st April, 1948. Further proceedings under the summons were then stayed. On the 16th January, 1952, the registrar of the Grimsby registry, on the application of the wife, ordered that the application of the 15th November, 1947, be dismissed, and on the 21st January, 1952, the wife took out a summons before the justices on the ground of wilful neglect to maintain. That summons was dismissed on 22nd February, 1952, the justices holding that they had no jurisdiction to deal with the matter because "... when the applicant elected to proceed in the High Court and obtained a decree for judicial separation in the court the High Court became seised and remained seised of the matter despite the appellant's efforts to put an end to such jurisdiction, for the decree obtained in the High Court is still in existence and the rights accruing to the appellant under the Matrimonial Causes Rules, 1950, r. 45, are still open to her at any time." From this decision the wife appealed.

LORD MERRIMAN, P., referred first to a point which had arisen in argument and which was, he said, of some public importance. The suggestion had been made that the alteration in the wording of s. 190 (4) of the Judicature Act, 1925, from "Where any decree for ... judicial separation" to "On any decree for judicial separation" by s. 20 (2) of the Matrimonial Causes Act, 1950, might result in the word "on" being given the same interpretation as that which had been established by litigation concerning claims for ancillary relief. His lordship said that it would appear on the face of r. 45 of the Matrimonial Causes Rules, 1950, that a wife in a suit for judicial separation could bring her application for alimony "at any time" after a decree has been pronounced and that the rule might not be *intra vires*. This point, however, was a comparatively subsidiary one in the present case for the real substance of the justices' reasons was that the mere existence of proceedings for judicial separation had inevitably raised and would continue to raise a conflict of jurisdiction in connection with maintenance. There was, however, authority to the contrary, namely, *Pooley* v. *Pooley* [1952] P. 65, the effect of which could be summarised by saying that the mere possibility that identical issues might arise in the High Court and in the justices' court did not give rise to a conflict of jurisdiction. It was the identity of the actual issues in the two courts which was the mischief at which decisions like *Higgs* v. *Higgs* [1935] P. 28 and *Kilford* v. *Kilford* [1947] P. 100 were aimed. The situation in the present case was, in a sense, the converse of that in *Pooley* v. *Pooley*, *supra*. When, therefore, the wife issued her present summons five days after the dismissal on the 16th January, 1952, of her application in the High Court no conflict of jurisdiction arose.

The same principle applied to the wife's rights under s. 23 of the Matrimonial Causes Act, 1950. If she were to sue in the High Court for wilful neglect to maintain, a conflict of jurisdiction would arise. The mere right to sue in itself could not give rise to any such conflict. The appeal must be allowed and the case remitted to the justices.

DAVIES, J., concurred.

APPEARANCES: *D. H. Robson* (*Theodore Goddard & Co.* and *Deacons & Pritchards*, for *H. K. & H. S. Bloomer*, Grimsby); *Bernard Gillis* (*Russell Jones & Walker*, for *Pearlman & Rosen*, Hull).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: CHARGING ORDER NISI NOT MADE ABSOLUTE: DEATH OF JUDGMENT DEBTOR

Scott *v.* Scott

Barnard, J. 5th November, 1952

Summons adjourned into court.

The parties were married in August, 1947. They separated shortly afterwards and on 17th November, 1947, the wife filed a petition for restitution of conjugal rights, and an order for the payment of alimony pending suit at the rate of £4 a week less tax was made on 21st January, 1948. No payments were made under the order, and on 21st May, 1949, certain 3½ per cent. War Stock was charged in respect of a debt due of £312 by a charging order *nisi*. Owing to negotiations between the parties the order was not made absolute before the death of the respondent on 20th May, 1950. The suit for restitution was never heard. The wife applied for the order *nisi* to be made absolute, the respondent to the application being the administrator of the husband's estate; but Mr. Registrar Long ordered the discharge of the order *nisi* and, upon the application of the administrator, discharged the order for alimony pending suit.

The relevant portion of s. 15 of the Judgments Act, 1838, reads: "... every order of a judge charging any government stock, funds, or annuities, or any stock or shares in a public company, under this Act, shall be made in the first instance *ex parte*, and without any notice to the judgment debtor, and shall be an order to show cause only ... And further, that, unless the judgment debtor shall within a time to be mentioned in such order show to a judge of one of the superior courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute; provided that any judge shall, upon the application of the judgment debtor, or any person interested, have full powers to discharge or vary such order, and to award such costs upon such application as he may think fit."

The petitioner appealed against the order discharging the charging order *nisi*.

BARNARD, J., said that the order for alimony pending suit came to an end when the suit abated on the husband's death. There was no order in existence to discharge and the order purporting to discharge it should be set aside.

Section 15 of the Judgments Act, 1838, covered the application to make the charging order *nisi* absolute and made it clear that there must be proof of notice of such an application to the judgment debtor, his attorney or agent. He (his lordship) could not agree with the argument submitted on behalf of the petitioner that the making of an order absolute was purely automatic when the respondent had failed to show cause by the date given in the order. *Stewart* v. *Rhodes* [1900] 1 Ch. 386, in which Lindley, M.R., at p. 401, had said that the judgment debtor "must be in a position to show cause why the charging order should not be made absolute. In other words, he must be alive," was very much in point. *Haly* v. *Barry* (1868), L.R. 3 Ch. 452, on which the petitioner relied, was to be distinguished.

Appeal as to discharge of charging order dismissed.

APPEARANCES: *J. A. Petrie* (*A. L. Bryden & Williams*); *John P. Brookes* (*A. G. Freeman & Son*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

Progress of Bills

Read First Time—

Agricultural Land (Removal of Surface Soil) Bill [H.C.] [9th December.

Life Peers Bill [H.L.] [10th December.

To authorise Her Majesty in each calendar year, beginning with the year 1953, to appoint not more than ten persons of either sex who are British subjects as Life Peers who shall be members of the House of Lords.

Read Third Time—

Civil Contingencies Fund Bill [H.C.] [9th December.

Colonial Loans Bill [H.C.] [9th December.

Greenock Corporation Order Confirmation Bill [H.C.] [11th December.

New Valuation Lists (Postponement) Bill [H.C.] [11th December.

Public Works Loans Bill [H.C.] [9th December.

In Committee—

Expiring Laws Continuance Bill [H.C.] [11th December.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time—

Local Government Superannuation Bill [H.C.] [9th December.

To amend the law as to the benefits to be payable to or in respect of contributions to superannuation funds maintained by local authorities and as to the persons entitled to participate in the benefits of those funds; to amend the Local Government Superannuation Act, 1937, and the Local Government Superannuation (Scotland) Act, 1937; to provide alternative benefits to those provided under section nine of the Local Government (Clerks) Act, 1931; to make provision as to payments due from local authorities to deceased employees; and for purposes connected therewith.

Read Second Time—

Education (Miscellaneous Provisions) Bill [H.C.] [9th December.

In Committee—

Transport Bill [H.C.] [11th December.

B. Debates

On the second reading of the **Town and Country Planning Bill** Mr. Harold Macmillan said that the Bill dealt with only one stage of the Government's plan. Another and more elaborate and complicated Bill would be required next year to complete the whole operation. It was proposed to stand firm on the planning principles of the 1947 Act but to make certain radical alterations in its financial provisions. It was proposed to stop payment out of the £300 million fund. People who had in fact suffered damage would be paid out as soon as possible from that fund, but others would receive compensation only as and when they were hurt by the planning law. Some would never qualify at all for payment of their claims on the fund. As the 1947 Act stood, many people would have received compensation for loss of development rights who never in fact had any intention of developing.

Mr. Macmillan said interest would be payable not on the global £300 million but on compensation as it became due.

It had also been decided to abolish development charge. He regarded this charge as really a form of tax and, inasmuch as the amount was always a matter of bargaining, it was a bad tax—unfair to those who had to assess it and properly resented by those who had to pay it. He had asked the Central Land Board, pending the passing of the Bill, to exercise their power of consenting to development without prior payment of charge.

All the work done by the Board in valuing claims would remain. On it would be based all payments of compensation as the right thereto arose. Claims would be paid on the basis of full value of the admitted claim—but on 1947 values, no matter when the loss arose. Many owners would be better off than if the global sum had been paid out for then they might have got only 80 per cent. Compensation would not be paid where permission to make a change of use was refused in the public interest. On the other hand, permitted changes of use would no longer attract charge.

The Government was retaining one most important weapon in the control of development, namely, the power of compulsory purchase at existing use value with 1947 values as the fixed ceiling upon the development value. Thus an owner could be compelled to sell at existing use value plus the amount of his admitted claim to compensation.

Compensation payments would not begin until 1954 but would carry interest from 1948. No refund of development charge already paid could be made—this in accordance with accepted taxation practice. On the other hand, the owner retained his claim to compensation if and when development occurred. Where a purchase price had been paid in between existing use and full development values the Government intended to try to arrange that the claim should be fairly divided between the original owner and the developer. Some provision would be made to assist those who had development value in 1947 but had omitted or been unable to put forward their claims [1st December.

C. Questions

Land Values (Tax)

Major Hicks Beach asked what were the objects of the continued implementation of s. 28 of the Finance Act, 1931, in view of the fact that this section was originally put on the Statute Book in connection with the tax on land values introduced by that Act. The Chancellor of the Exchequer said that the information about transfers and leases of real property which was obtained under this section was of great importance to the Inland Revenue Valuation Office in valuing land for estate duty and stamp duty purposes and in assisting Government departments and local authorities who were acquiring or disposing of land. [28th November.

Land Transfers (Staff and Forms)

Mr. Boyd-Carpenter stated that a staff of about 130 was engaged in supplementing s. 28 of the Finance Act, 1931, at a cost of about £50,000 a year. The annual cost of printing Form L(A)–45 in this connection was about £400 a year. [1st December.

Charities (Legal Definition)

Asked whether he was aware of the prevailing uncertainty regarding the definition of what constitutes a charity, and whether he would introduce legislation to clarify and widen the legal definition, the Attorney-General said that this was one of the questions considered by the Committee under the chairmanship of Lord Nathan which had been appointed to inquire into the law relating to charitable trusts. The report of that Committee was now being considered and it was hoped to make a statement about it shortly. [1st December.

Development Grants

Mr. Harold Macmillan stated that information as to the acreage of areas of comprehensive development eligible for Exchequer grant under the Town and Country Planning Act, 1947, which had been shown on development plans so far submitted to him, was not available. Areas defined in development plans for comprehensive development might include land for purposes in addition to those for which Exchequer grant under the Town and Country Planning Act, 1947, might be paid, and a decision as to what part of the land should be approved for payment of grant was made later when detailed proposals for the development had been prepared and the development could be undertaken. [3rd December.

Hire-Purchase Agreements

Mr. H. Strauss said he was aware that, consequent upon the conviction of traders for breaches of the hire-purchase regulations, there was doubt as to the ownership of goods disposed of under a hire-purchase agreement which did not comply with the provisions of the Hire-Purchase and Credit-Sale Agreements (Control) Order, 1952. He did not consider that legislation to define the

civil rights of the parties under such an agreement was either desirable or practicable. The terms of the agreement between the parties might vary considerably in different cases. It would be wholly inappropriate to make a general statement without investigation of the facts, and he did not think it was the business of the Government or of the Attorney-General to give advice to all the people who might be concerned in a great variety of transactions. In some of the cases mentioned the conduct of the purchaser might by no means have been without serious fault. [7th December.

Pedestrian Crossings Regulations

Asked by Dr. Barnett Stross whether he had noted the implications of a recent decision in a Divisional Court of the Queen's Bench Division in the case of *Leicester* v. *Pearson*, and whether he would re-draft the Pedestrian Crossings (London) Regulations, 1951, so as to avoid any doubt as to the absolute right of pedestrians on zebra crossings, Mr. Braithwaite said it was the duty of a driver of a vehicle to give way to a pedestrian at an uncontrolled crossing if the pedestrian was on the crossing before the vehicle or any part of it had come on to the crossing. The decision in *Leicester* v. *Pearson* did not affect this duty of the driver and he did not think there was any need to amend the Pedestrian Crossings Regulations. [8th December.

Tithe Redemption Charges (Bankruptcies)

Mr. H. Strauss stated that he was informed by the Tithe Redemption Commission that twenty-seven receiving orders had been made since 1936 on petitions presented by the Commission due to non-payment of tithe redemption charges. [9th December.

Circuits Management Association (Prosecution)

Mr. Swingler asked whether the attention of the President of the Board of Trade had been drawn to the comments of the Chief Metropolitan Magistrate on the manner in which his department launched a prosecution against the Circuits Management Association for film quota default. Mr. H. Strauss said the President had studied the comments of the learned Chief Metropolitan Magistrate and entirely agreed that the decision whether to prosecute in such a case was for the Board of Trade and not for the Cinematograph Films Council, but he considered that the decision to prosecute was rightly taken in this particular case. [9th December.

Merchandise Marks Act (Legislation)

Mr. H. Strauss stated that legislation would soon be introduced to broaden the scope of the Merchandise Marks Act. [9th December.

Town and Country Planning (Rejected Claims)

Mr. R. A. Butler said that up to 30th November, 1952, the Central Land Board had prepared determinations for about 6,000 claims in England and Wales as falling to be rejected under the *de minimis* provisions of s. 63 of the Town and Country Planning Act, 1947. [9th December.

Unauthorised Firearms (Penalty)

Mr. R. A. Butler declined to introduce legislation to amend the Gun Licence Act, 1870, so that the maximum penalty for carrying a firearm without a licence should include a prison sentence instead of the present penalty of £10. He thought that, having regard to the provisions of the Firearms Act, 1937, which envisaged imprisonment in appropriate cases, an excise penalty of £10 was adequate in respect of a breach of the Act of 1870. [9th December.

Rent Restriction (Succeeding Tenancies)

Mr. Shurmer asked whether the Minister of Housing and Local Government was aware of the distress caused by the working of s. 13 of the Rent Restriction (Amendment) Act, 1933, which was causing numerous evictions, and if he would consider legislation to extend protection from one succeeding tenancy to two or more. Mr. Marples said that this was one of the points at which the Government would look when reviewing the Rent Restriction Acts. [9th December.

Derelict Premises (Owners' Responsibilities)

Mr. Awbery asked the Minister whether he was aware that owners of houses and premises destroyed by enemy action were still forced to maintain safety and health standards of the derelict premises and to pay ground rent although unable to use the land, and if he would take steps to release these people from this obligation.

Mr. Marples said the Government could not relieve owners of war damaged premises from their statutory responsibilities for preventing danger or nuisance to the public. [9th December.

P.O. Savings Bank (Fraudulent Withdrawals)

Mr. Gammans gave the following figures of fraudulent withdrawals :—

Year	Number of fraudulent withdrawals	Number of fraudulent withdrawals as a percentage of the total number of withdrawals during the year
		Per cent.
1945	13,251	·03
1946	17,497	·02
1947	33,360	·05
1948	22,587	·04
1949	11,415	·02
1950	5,911	·01
1951	4,942	·01

[9th December.

STATUTORY INSTRUMENTS

Agriculture (Maximum Area of Pasture) (Extension) (Scotland) Order, 1952.

Air Navigation (Fifth Amendment) Order, 1952. (S.I. 1952 No. 2104.)

Assistant Nurses Committee (Election Scheme) Rules, Approval Instrument, 1952. (S.I. 1952 No. 2088.) 6d.

Bahrain Order, 1952. (S.I. 1952 No. 2108.) 1s. 2d.

Building Byelaws (Extension of Operation) Order, 1952. (S.I. 1952 No. 2087.) 8d.

Carriage by Air (Non-international Carriage) (Channel Islands) Order, 1952. (S.I. 1952 No. 2103.) 8d.

Carriage by Air (Parties to Convention) (No. 3) Order, 1952. (S.I. 1952 No. 2105.)

Chatham and District Water Order, 1952. (S.I. 1952 No. 2068.) 6d.

Clydebank and District Water Order, 1952. (S.I. 1952 No. 2112 (S. 107).)

Companies (Board of Trade) Fees Order, 1952. (S.I. 1952 No. 2117 (L. 16).)

Control of Building Operations (No. 18) Order, 1952. (S.I. 1952 No. 2111.) 5d.

Dangerous Drugs Act, 1951 (Application) (No. 2) Order, 1952. (S.I. 1952 No. 2106.)

Defence Regulations (Isle of Man) Order, 1952. (S.I. 1952 No. 2092.)

Defence Regulations (No. 2) Order, 1952. (S.I. 1952 No. 2091.) 6d.

Defence Regulations (No. 3) Order, 1952. (S.I. 1952 No. 2093.)

Defence Regulations (No. 4) Order, 1952. (S.I. 1952 No. 2100.)

Emergency Laws (Continuance) Order, 1952. (S.I. 1952 No. 2095.) 5d. See *ante*, p. 838.

Emergency Laws (Miscellaneous Provisions) (Colonies, etc.) Order in Council, 1952. (S.I. 1952 No. 2099.)

Emergency Laws (Miscellaneous Provisions) (Guernsey) Order in Council, 1952. (S.I. 1952 No. 2098.)

Emergency Laws (Miscellaneous Provisions) (Isle of Man) Order in Council, 1952. (S.I. 1952 No. 2096.)

Emergency Laws (Miscellaneous Provisions) (Jersey) Order in Council, 1952. (S.I. 1952 No. 2097.)

Feeding Stuffs (Prices) (Amendment No. 3) Order, 1952. (S.I. 1952 No. 2083.) 8d.

Draft **House of Commons** (Redistribution of Seats) (Scotland) (Bothwell, North Lanarkshire, and Coatbridge and Airdrie) Order, 1952.

Draft House of Commons (Redistribution of Seats) (Scotland) (Bothwell, North Lanarkshire and Motherwell) Order, 1952.

Draft House of Commons (Redistribution of Seats) (Scotland) (Clackmannan and East Stirlingshire and Stirling and Falkirk Burghs) Order, 1952.

Draft House of Commons (Redistribution of Seats) (Scotland) (West Fife and Kirkcaldy Burghs) Order, 1952.

Draft House of Commons (Redistribution of Seats) (Scotland) (West Renfrewshire and Greenock) Order, 1952.

Industrial Assurance (Amendment of Fees) Regulations, 1952. (S.I. 1952 No. 2115.)

London Traffic (Prescribed Routes) (No. 26) Regulations, 1952. (S.I. 1952 No. 2077.)

North Devon Water Board Order, 1952. (S.I. 1952 No. 2078.)

Old Metal Dealers (No. 8) Order, 1952. (S.I. 1952 No. 2084.)

Patents (Extension of Period of Emergency) Order, 1952. (S.I. 1952 No. 2101.)

Patents, etc. (Indonesia) (Convention) Order, 1952. (S.I. 1952 No. 2107.)

Perambulator and Invalid Carriage Wages Council (Great Britain) Wages Regulation Order, 1952. (S.I. 1952 No. 2110.) 6d.

Poisons List Order, 1952. (S.I. 1952 No. 2085.) 6d.

Poisons Rules, 1952. (S.I. 1952 No. 2086.) 1s. 5d.

Purchase Tax (No. 8) Order, 1952. (S.I. 1952 No. 2119.) 5d.

Registered Designs (Extension of Period of Emergency) Order, 1952. (S.I. 1952 No. 2102.)

Supplies and Services (Continuance) Order, 1952. (S.I. 1952 No. 2094.) See *ante*, p. 838.

Trading with the Enemy (Enemy Territory Cessation) (Luxembourg) Order, 1952. (S.I. 1952 No. 2067.)

Ware Potatoes (Amendment No. 2) Order, 1952. (S.I. 1952 No. 2109.) 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d. post free.]

NOTES AND NEWS

Miscellaneous

Messrs. Blyth, Dutton, Wright & Bennett held a dinner at The Law Society's Hall on 27th November, 1952, to celebrate the centenary of the foundation of the firm by Edmund Kell Blyth, senior, in 1852. It is noteworthy that two generations only span the century, the present senior partner, Thomas Tolme Blyth, being a son of the founder, whilst Edmund Kell Blyth, junior, a grandson of the founder, is another partner. The firm has practised within the City of London since its foundation.

The Croydon Courts' dinner was held on 28th November under the presidency of His Honour Judge Sir Gerald Hurst, Q.C., and the chairmanship of Mr. Registrar Humfrey, D.L. Tributes to Sir Gerald upon his retirement after fifteen years as judge were paid by Mr. Justice Collingwood (for the judges), Alderman Boddington (for the magistracy), Mr. Michael Hoare (for the Bar) and Mr. R. D. Marten, J.P. (President of the Croydon Law Society). Sir Gerald, who received a striking ovation, after responding, introduced his successors, their Honours Judges Rice-Jones and Glazebrook. The company of 330 also included the Mayors of Croydon, Beddington and Wallington, their Honours Judges Tudor Rees, D.L., Norman Daynes, Q.C., and Gordon Clark, Messrs. G. P. Coldstream, C.B., and F. Mayell, O.B.E., of the Lord Chancellor's Office, chairmen of Benches, and many registrars, justices, counsel, solicitors and officials.

SOCIETIES

A joint moot held by the BENTHAM CLUB—the association of law graduates of University College, London—and the UNIVERSITY COLLEGE LAW SOCIETY took place at University College on 17th November, 1952, and was presided over by Mr. Justice Sellers. There appeared for the Bentham Club Mr. Sebag Shaw and Mr. Henry Harris in the capacity of leaders, while the University College Law Society was represented by Mr. J. Black and Mr. R. A. Mahfood, who appeared as juniors.

At the sixty-seventh annual general meeting of the HALIFAX INCORPORATED LAW SOCIETY, LIMITED, held at Hopwood Hall on 4th December, the following officers were re-elected: President, Mr. H. Whitley; Vice-Presidents, Mr. J. E. Sanger and Mr. R. V. Thomas; Hon. Secretary, Mr. G. Brian Collinson; Hon. Treasurer, Mr. E. Maurice Drake; Hon. Librarian, Mr. J. A. Bearder.

CASES REPORTED IN VOL. 96

20th September to 20th December, 1952

Lists of cases reported earlier this year appear in the Interim Index (to 28th June) and at p. 598, *ante* (5th July to 13th September)

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 102–103 Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).